AN

ANALYTICAL DIGEST

OF ALL

THE REPORTED CASES

DECIDED IN THE

SUPREME COURTS OF JUDICATURE IN INDIA,

IN THE

COURTS OF THE HON. EAST-INDIA COMPANY,

AND ON APPEAL FROM INDIA,

BY HER MAJESTY IN COUNCIL;

WITH

ILLUSTRATIVE AND EXPLANATORY NOTES.

BY

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"IF IT BE ASKED HOW THE LAW SHALL BE ASCERTAINED WHEN PARTICULAR CASES ARE NOT COMPRISED UNDER ANY OF THE GENERAL RULES, THE ANSWER IS THIS: THAT WHICH WELL-INSTRUCTED BRAHMINS PROPOUND SHALL BE HELD INCONTESTABLE LAW."

MENU, B. xii. v. 108.

NEW SERIES.

VOL. I.

CONTAINING THE CASES TO THE END OF THE YEAR 1850.

LONDON:

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OSTELL AND LEPAGE, CALCUTTA.

M DCCC LII.

"THE DOCTRINE OF THE LAW THEN IS THIS: THAT PRECEDENTS AND RULES MUST BE FOLLOWED, UNLESS FLATLY ABSURD AND UNJUST: FOR THOUGH THEIR REASON BE NOT OBVIOUS AT FIRST VIEW, YET WE OWE SUCH A DEFERENCE TO FORMER TIMES AS NOT TO SUPPOSE THAT THEY ACTED WHOLLY WITHOUT CONSIDERATION. UPON THE WHOLE, WE MAY TAKE IT AS A GENERAL RULE, 'THAT THE DECISIONS OF THE COURTS OF JUSTICE ARE THE EVIDENCE OF WHAT IS COMMON LAW:' IN THE SAME MANNER AS, IN THE CIVIL LAW, WHAT THE EMPEROR HAD ONCE DETERMINED WAS TO SERVE FOR A GUIDE FOR THE FUTURE."

Blackstone's Commentaries, Introd. Sec. 3.

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INTRODUCTION.

In the Introduction to the First Volume of the Digest I announced my intention of continuing it periodically, so as to bring down the cases, as nearly as might be, to the time of each successive publication. The present volume, the first of the New Series, contains the decisions to the end of the year 1850.

Following the course already adopted in the former Introduction, I shall preface this volume by a few remarks on the Law, the Law-books, and the sources from which the cases it comprehends have been drawn.

No change of any great importance has lately taken place in the system for the administration of justice in India, either in the Queen's or the Company's Courts; but I must here supply an important omission in the Introduction to the First Volume of the Digest, which arose from the more recent Acts of Government not having then come into my hands. I refer to the institution of the Courts of Small Causes at the three Presidencies, in lieu of the Courts of Requests. By Act IX. of 1850, it was enacted, that the Governor-General in Council might appoint Judges of these Courts, not exceeding three, and that the jurisdiction of the Courts should extend to the recovery of any demand not exceeding Rs. 500. All suits brought in such Courts are to be heard and determined in a summary way; and every defence which would be deemed good in the Supreme Courts, sitting as Courts of Equity, is a good bar to any legal demand in the Courts of Small Causes. These Courts have no jurisdiction in any matter concerning the revenue, or concerning any act ordered or done by the Governor, or Governor-General, or

any member of the Council of India, or of any Presidency, in his public capacity, or done by any person by order of the Governor-General or Govenor in Council, or concerning any act ordered or done by any Judge or Judicial Officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court, or any such Judge or Judicial Officer, or in any suit for libel or slander. The Judges of these Courts are empowered to make rules of practice and procedure, subject, however, to the approval of the Supreme Courts.

The law-literature of India has received a few additions since I last wrote: these I shall here describe, together with some works omitted in the former lists.

In the branch of Hindú law I have only met with two publications of texts; the one, a new edition of the Dáya Bhága of Jímúta Váhana, with the Commentary of Srikrishna Tarkálankára, which appeared at Calcutta in 1844; the other, a compilation in Telugu from the Mitákshará, and other works.[1]

M. Gibelin published a work at Pondicherry, in 1846-47, which may be pointed out to the reader's notice as exhibiting a comparison between the civil law of the Hindûs, the laws of Athens and Rome, and the customs of the Germans.[2] M. Gibelin's volumes, in their comparative portion, are very interesting; but there is much irrelevant speculation, and they are disfigured by a number of fantastical etymologies, which are quite as extravagant as any that are to be found in the pages of Bryant, Vallancey, or Alexander Murray.

The presses in India, which have of late so largely contributed to every branch of Muhammadan literature, have not neglected the subject of Law. I fear that many of the legal works have not as yet reached England; but I shall here make

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[1] Vyavahara Durpanum. A compilation of the Vijnanaswareyum, Smritichendrika, and several other works on Hindú Law. Revised by Vuttyum Vasoodeva Para Bhrummah Saustrooloo. 8vo. Madras, 1851.

[2] Études sur le droit civil des Hindous; recherches de législation comparée sur les lois de l'Inde, les lois d'Athènes et de Rome et les coutumes des Germains. Par E. Gibelin. 2 Tomes, 8vo. Paris, 1846-47

mention of such as have come under my own notice. These are as follows.

The Kauz al-Kabír fí Usúl at-Tafsír, a treatise on the science of commentating on the Korán, by Mullá Sháh Walí Allah Muhaddis Dahlawí, was printed at Delhí in 1842.[1]

The Sahíh of Muslim appeared at Calcutta in the year 1848. This edition is lithographed.[2]

A Persian translation and commentary on the Mishkát al-Masábih, entitled the Ashiaâh al-Lamaát fí Sharh al-Mishkát, by the Shaikh Âbd al-Hakk Dahlawí, was published at Calcutta in 1842.[3]

A short tract in Persian, by Mullá Háfiz Sháh Âbd al-Âzíz, entitled Risálah-i Usúl-i Hadís, may also be mentioned. It is a sort of introduction to the study of the Sunnah, and was published at Calcutta in 1838.[4]

The Asás al-Usúl, by the Sayyid Dildár Âlí Ben Sayyid Muhammad Muîín al-Hindí an-Nasrábádí, is a treatise on the sources of the law. It was published in lithography, at Lakhnau, in the year 1847.[5]

A new edition of the Núr al-Ánwár fí Sharh al-Manár was published in lithography at Lakhnau in the year 1849.[6]

A short general law treatise in Urdú, entitled Fikh Ahmadí, by Maulaví Kadrat Ahmad Ben Háfiz Înáyat Ahmad Farúkí was lithographed at Delhi in 1847.[7]

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[1] قوز الكبير في اصول التّفسير از تصنيفات مولانا شاه ولي اللّه محدّث دهلوي. 8vo. Delhi, A.H. 1258 (A.D. 1842).

[2] مسند الصّحيح تاليف الامام الحافظ امام المحدّثين ابي الحسين مسلم الحجاج بن مسلم القشيري النّيشابوري. 2 Vols. Fol. Calcutta, A.H. 1265 (A.D. 1848).

[3] اشعّة اللمعات في شرح المشكوة تصنيف شيخ عبد الحقّ دهلوي. 4to. Calcutta, A.H. 1258 (A.D. 1842).

[4] رسالهٔ اصول حديث. 8vo. Calcutta, A.H. 1254 (A.D. 1838).

[5] اساس الاصول. 8vo. Lakhnau, A.H. 1264 (A.D. 1847).

[6] كتاب نور الانوار في شرح المنار. 8vo. Lakhnau, A.H. 1266 (A.D. 1849).

[7] فقه احمدي. 8vo. Dehli, A.H. 1264 (A.D. 1847).

At the same place, and in the same year, appeared a translation in Urdú by Muhammad Husain Ben Muhammad Bákir of a Persian treatise on the law of marriage by Mullá Muhammad Bákir.[1] This work is also lithographed.

A very complete treatise in the Persian language on the Shíâh law of inheritance was printed in lithography at Lakhnau in 1841.[2] It is an extract from a larger work, entitled the Rauzat al-Ahkám by Sayyid Husain. This treatise well deserves translation; for although it presents all the peculiar difficulties attendant on the mode of treatment adopted by the Muhammadan lawyers, it is very full and satisfactory. Another treatise on inheritance, in the Urdú language, entitled Kitáb Îlm al-Faráïz, was lithographed at the same place, in the year 1847.[3] The author is Mullá Înáyat Ahmad.

A new edition of the Durar al-Mukhtár was printed at Calcutta in 1846.[4]

The works on the Muhammadan law by European authors, not already described, are only four in number, and two of these are in continuation of works previously noticed.

A volume entitled "Droit Musulman," forming the first section of a projected collection of ancient and modern codes in general, was published at Paris in 1849.[5] It is the joint production of MM. Joanny Pharaon and Théodore Dulau; but as M. Dulau informs us that the former gentleman knows but little law, and that he himself is entirely ignorant of Arabic (p. 473), it is scarcely necessary to state that the work is valueless as an

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[1] ترجمهٔ رسالهٔ نكاح مولفهٔ ملّا محمّد باقر مجلسي بزبان فارسي كه آنرا محمّد حسين بن محمّد باقر بزبان اردو ترجمه نمود در بيان نكاح و غيره امور حلال و حرام. 8vo. Delhi, 1264 (A.D. 1847).

[2] رساله متعلّق باحكام مواريث جزويست از مقصد رابع كتاب مستطاب روضة الاحكام. 8vo. Lakhnau, A.H. 1257 (A.D. 1841).

[3] كتاب علم الفرائض. 8vo. Laknau, A.H. 1264 (A.D. 1847).

[4] فتاوي درر المختار في شرح تنوير الابصار. 4to. Calcutta, A.H. 1263 (A.D. 1846).

[5] Etudes sur les legislations anciennes et modernes. Première Classe. Legislations Orientales. Première partie. Droit Mussulman. Par Joanny Pharaon et Théodore Dulau. 8vo. Paris, 1841.

authority. M. Pharaon, as it appears, is a voluminous writer on various subjects; amongst other productions, he has written a treatise on the French, Musulmán, and Jewish legislation at Algiers:[1] this work I have not seen.

M. Perron's excellent translation of the Mukhtasar of Khalíl Ibn Isháķ is still in progress, the fifth volume having appeared within the last few months. M. Du Caurroy is also continuing his learned treatise on the Hanafí law in the Journal Asiatique: the seventh article was printed in the June number of that periodical.

An important work on the Muhammadan law was published in Russian, at St. Petersburg, in the year 1850.[2] The author, M. Nicholas Tornau, has derived his work from original sources, and has embodied in it a quantity of information obtained by himself from living Muhammadan doctors: it comprehends both the Sunní and Shíâh laws.

The recent works on the Regulation law are not numerous. Mr. Clarke has completed his edition of the Bombay Code of Regulations, following the same plan that he adopted in his former volume of the Madras Code. The Bengal Regulations by the same editor are in the press, and will speedily appear.

The first part of an Index to the unrepealed enactments of the Government of India for the Presidency of Fort William, containing the civil enactments, was published at Calcutta in 1849. Mr. Fenwick, the author of this useful compilation, has adhered to the plan of Dale's Index.

Mr. Theobald has continued his collection of the Acts of the Government to the end of 1848, and has added a new Index to the whole volume, completing the Acts from 1834 to 1848 inclusive. Since then he has edited the Acts for the years 1849, 1850, and 1851, with Indices; and the publishers have announced their intention of discontinuing their own annual

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[1] De la législation française, mussulmane et juive à Alger. 8vo. Toulon, 1835.

[2] Izloshénie Natchal Musulmansnago Zakonovèdèniya. (An Exposition of the Rudiments of Musulmán Jurisprudence.) 8vo. St. Petersburg, 1850.

reprint of the Acts, and of supplying Mr. Theobald's edition, which will in future be annual, in lieu of it.

An Index to the Acts passed by the Legislative Council of India from 1834 to 1849, by Mr. Small, appeared at Calcutta in 1851.

The Acts and Orders for the North-Western Provinces for the year 1844 were published at Agra in 1846.

The most important work that has yet appeared respecting the actual working of the system for the administration of justice in India, is Mr. Macpherson's treatise on the Procedure of the Civil Courts in Bengal.[1] The author has followed the method adopted by the writers of books of practice in this country, and has executed his task with great ability and judgment. The acumen with which he deduces principles from the decisions of the Courts, and the lucidity of arrangement throughout the work, are remarkable, whilst the mass of authorities quoted in the margin bear witness to his untiring industry and deep research. Mr. Macpherson is an English barrister; and his work proves, if proof were necessary, the advantage of bringing a legal education to bear on the analysis and illustration of the intricate law of India, and the policy of the enactment of 1846 (Act I.), which, opening a new Forum for the honourable exertion of the Indian bar, must eventually be of mutual advantage both to that bar and to the Company's Courts.

A very useful compilation by Mr. Marshman, entitled the Darogah's Manual,[2] was published at Serampore in 1850. This work includes every Rule and Order which it is important for the Police-officers to know, in the Regulations and Acts, in the Circular Orders of the Superintendent of Police, and of the Nizamut Adawlut, and in the Constructions and Reports, scien-

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[1] The Procedure of the Civil Courts of the East-India Company in the Presidency of Fort William in regular suits. By William Macpherson, of the Inner Temple, Esq. Barrister-at-Law. 8vo. Calcutta, 1850.

[2] The Darogah's Manual, comprising also the duties of Landholders in connexion with the Police. By J. C. Marshman. 8vo. Serampore, 1850.

tifically arranged. To render the work more complete, all the rules which determine the Police responsibilities of the Zamíndárs, and of all persons connected with the landed interest, both in the Lower and in the North-western Provinces, are fully given. It must be observed, however, that this work does not comprehend the duties of Magistrates and the Superintendent of Police, except in connexion with the Officers of Police and the Zamíndárs.

I may here mention two works that have recently appeared, which, though not immediately connected with the Regulation law, afford incidentally much valuable information on the judicial system. These are M. Barchou de Penhoën's "L'Inde sous la domination Anglaise,"[1] and the "Notes on the North-Western Provinces of India," by Mr. Raikes.[2] M. De Penhoëns work, though not divested of prejudice, exhibits a tolerably fair appreciation of our system of government in India; and leaning to the exposure of its weak points is, for that very reason, the more worthy of a careful perusal. The Notes of Mr. Raikes, which were written originally in the Benares Magazine, offer a popular but accurate account of the rise and progress of the Revenue system, the condition of the landed proprietors, and of the agricultural classes, and comprise many interesting details as to the duties of Magistrates and the operation of the Police Regulations.

It now remains, in conclusion, to enumerate the collections of reported cases from which the decisions in the present volume have been derived.

The decisions of the Judicial Committee of the Privy Council are brought down to the 18th February, 1850, and are taken from the fourth volume of the Indian Appeal Cases reported by Mr. Moore, which is now complete.

The example set by Mr. Morton in publishing the decisions

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[1] Histoire de l'Inde Anglaise. L'Inde sous la domination Anglaise. Par M. le Baron Barchou de Penhoën. 2 Tomes, 8vo. Paris, 1850.

[2] Notes on the North-Western Provinces of India. By Charles Raikes. 8vo. London, 1852.

of the Supreme Courts at Calcutta,[1] has been worthily followed by other Barristers of the Court. Mr. Montriou, in 1850, published a volume of Reports comprising the decisions of the year 1846; in the following year Mr. Taylor continued these Reports to the end of the year 1848; and the latter gentleman, in conjunction with Mr. Bell, is at present occupied in the publication of subsequent cases. Of this last collection I have received four parts, bringing the cases down to the 3d January 1850.

The decisions of Her Majesty's Courts in the Madras and Bombay Presidencies still remain unreported.

The seventh volume of the Select Reports of Cases determined in the Sudder Dewanny Adawlut at Calcutta has been completed. Since the end of the year 1844, these Reports, published as "approved by the Court," are "but a re-print, accompanied by notes, of such of the decisions, published monthly, as, containing constructions of law, or being illustrative of points of practice, are adapted to serve as precedents to the Lower Courts."[2] It was subsequently determined by a resolution of the Court, dated the 27th April 1849, that the publication of the Select Cases should be discontinued. The mere re-print of a selection from the monthly publications of decisions was doubtless unnecessary, as the object of pointing out the "leading cases," might have been more readily accomplished by the addition of a tabular reference and explanatory notes, sanctioned by the Court, and appended to the monthly issue. This, however, has not been done, and it cannot be denied that much inconvenience has arisen from the discontinuance of the Select Reports.

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[1] A new edition of Morton's Decisions, edited by Mr. Montriou, is in course of publication at Calcutta. The titles, ADMINISTRATION, ADMIRALTY, APPEAL, and EXECUTOR, are advertised as now ready, but no copy has as yet reached this country. It is stated in the advertisement that the original plan of the work is considerably enlarged in the new edition, by the addition of notes to each head or title; also of such decisions and alterations in the law and practice as are necessary to render the book a useful and complete epitome of the law embraced by the judgments reported, and a safe guide to the practitioner.

[2] Advertisement to S. D. A. Rep. Vol. VII. Pt. 5.

I mentioned in the previous Introduction (p. cccvii.) that a selection of decisions in summary cases from 1834 to 1841 had been made and published as a first part of the volume of Summary Reports: these selected cases will be found arranged in the present volume. In the resolution of the Court, dated the 27th April 1849, to which I have already referred, it is stated, with regard to the Reports of Summary Cases, that "the Court are of opinion that their publication may go on, not as 'approved by the Court,' but with the sanction only of the Judge in charge of the Miscellaneous Department, whose decisions they are, and who will note such of them as he may think useful for publication." The Reports of Summary Cases which have come into my hands extend to the end of 1848, completing the first volume.

An Index to the whole seven volumes of the Select Reports of Regular Cases, and to the first volume of the Select Reports of Summary Cases, was published in 1849.

Mr. Sevestre's valuable Reports are still in progress: he has completed the second volume, and two parts of a third have appeared, bringing down the cases to the end of 1851. I have inserted the decisions contained in these Reports to the end of 1850.

The decisions of the Sudder Dewanny Adawlut at Calcutta, recorded in English under Act XII. of 1843, of which the publication was commenced in 1845, are still issued monthly, the decisions of each year forming a separate volume.

In the volume for 1850 marginal abstracts of the decisions reported were for the first time added.

The decisions of the Sudder Courts at Agra and Madras, recorded in English under the above-mentioned Act, the publication of which commenced respectively in 1846 and 1849, appear monthly.

According to the original plan for the continuation of the Digest, a selection only was to have been made from the monthly collections. I found, however, on a careful examination of them, that though defective in many respects, they were entitled to more particular attention than I had at first contemplated.

The former Reports of cases determined in the Sudder Courts principally relate to constructions of the written law, touching only occasionally on points of procedure and practice; so that the publication of the decisions recorded in English, including cases of every description, may be said to have opened an entirely new field for the investigation of the student.

Mr. Macpherson, in his admirable treatise on the procedure of the Civil Courts in the Presidency of Fort William, observes —"The practice and doctrines of the Civil Courts must be deduced, in great measure, from an examination of the decisions at large, both those which have been specially adopted and published as precedents, and those which are issued monthly as a record of the ordinary transactions of the Sudder Court; for all decisions practically tend to shew by what principles the Court is governed; and they become law, that is to say, they guide men in their private transactions, and they regulate the decisions of the Courts. No one can make the examination to which I have referred, without perceiving that there is a large body of living doctrine, which appears to mature itself by degrees in the minds of experienced judicial officers, but which is not to be met with in any definite form. Yet by this test the judgments of the inferior Courts are necessarily tried, and no small portion of them are quashed for erroneous procedure; frequently with great severity of comment upon the part of the highest tribunal."

The monthly collections are of the highest value as exhibiting a faithful record from which the living doctrine, alluded to by Mr. Macpherson, may be gathered; and, as they are published simultaneously at Calcutta, Agra, and Madras, we are enabled to form a comparison between the practice of the several Courts of last resort, which cannot fail to be of the utmost utility in furthering the attainment of uniformity of procedure throughout the Courts in India. Unfortunately, however, these decisions are not easily referred to: the Indices which are appended are insufficient, and the mode in which the cases themselves are reported is often such as to render it difficult to seize their full bearing. It is also much to be regretted that the plan of adding marginal notes to

these collections has been so long delayed, and is not even now generally followed. No one who has not examined them with attention can form an idea of the labour requisite to master the contents of a single volume. The propriety of the object of their publication, viz. "to give all possible publicity to the decisions of the Sudder Courts," is unquestionable; but it may be doubted whether the requisite publicity might not have been better attained by adopting a somewhat modified form. I would particularly refer to the frequent and needless repetition of similar cases and decisions. This repetition is especially conspicuous with regard to cases involving points of practice, reports constantly recurring in which precisely similar circumstances present themselves, and the erroneous decisions of the lower Courts, passed on the same points, are reversed, or the suits remanded on appeal, on identical grounds.[1]

Mr. Macpherson expresses a fear that these published decisions "are but partially known, even to the Judges and practitioners of the subordinate Courts;" and, after an attentive perusal of them, I must add, that I think his fears are but too well founded. The Judges of the Sudder Courts in the several Presidencies are, no doubt, well acquainted with the decisions both of their predecessors and contemporaries, and the practice of the Courts has become familiar to them from long experience; but this is not always the case with the subordinate judicial officers, to whom it is of the greatest moment that they should have the means of acquiring the requisite knowledge for their guidance with the least possible amount of labour and expenditure of time. Does the present system of publishing the decisions afford such means? I apprehend that no one will answer in the affirmative. The judgments themselves, it is true, shew, on the face of them, that they are the result of

[1] As an example of this useless repetition, the reader may refer to the case of *Nowell* v. *Becher*, S. D. A. Decis. Beng. 1845, p. 322. The case itself occupies three pages, whilst the record of other appeals on the petitions of the same party, containing the same statements repeated *verbatim*, and referring to the first report for the opinion of the Court, fills no less than eighty-three pages.

patient investigation and deliberate weighing of the facts, and in numberless instances they are remarkable for their lucidity and precision. It will, however, be obvious to every one accustomed to the use, and consequently appreciating the value, of full and explicit reports of the leading cases decided in the superior Courts of Justice, that the meagre record of judgments, however valuable in themselves, without discrimination or comment, regardless of repetition, difficult of reference, and mixing up the most trivial with those of the last importance, can afford but slight instruction to the profession at large.

I trust that the present volume may in some measure supply the means of reference to the monthly collections, and obviate the inconvenience resulting from the quantity of unimportant matter they contain; but even if we may thus be enabled to discover at once any particular decision, I think, as I have already said, it may still be urged against the actual system of reporting, that the mode in which the circumstances of each case are set forth is very often insufficient.[1] It may be difficult to point out a remedy, but some remedy should be found. The absence of a local bar in the Sudder Courts renders it unlikely that the practitioners in these Courts will gratuitously undertake the laborious task of reporting, and the risk of publication; but it might, and I believe would, be advantageous, as well to the judicial officers in the Mofussil, as to the practitioners in all the Company's Courts, and to the litigants throughout our territories in India, if authorised reporters, paid by the Government, and under the immediate direction of the learned Judges, were appointed in each of the Sudder Courts. The Judges might, as heretofore, point out to the reporters the cases most worthy of notice, and the arguments of the pleaders, and the authorities referred to, might be added when necessary.

The collections of decisions now fill many volumes, and

[1] In some instances, for example, the reader is referred for the statement of the facts of a case to the monthly issue of the decisions of the Zillah Courts. Than this nothing can be more inconvenient.

their very imperfections made it imperative upon me to study them the more carefully. I had not proceeded far when I found that many points of practice, apparently simple and well known, were often overlooked or wrongly decided in the lower Courts; and that it was therefore requisite, instead of making a mere selection from the decisions on points of practice, to include in the Digest an abstract of almost every one, omitting only the numerous instances of repetition to which I have already adverted. I believe that I have not left unnoticed any decision which has reversed the judgment of a lower Court, either on the ground of the neglect or ignorance of the subordinate judicial officers; and if, as will occur to the reader in many cases, a mere apparent truism is set down as a judgment, it will, I think, be found that such judgment was in reversal of the decision of the lower Courts, passed in opposition to the established rules of practice, and consequently necessary to be referred to for the information of those Courts in future.

I mentioned in the Introduction to the first volume of the Digest my intention of including the published decisions of the Zillah Courts in the Supplement. As it appears, however, that they are not cited as precedents in the superior Courts, and therefore cannot be considered as of authority, I have not thought it necessary to insert them.

At Bombay there is but a slight addition to the Reports of Civil Cases, but it is a very useful one. In 1850, Mr. Bellasis, late Deputy-Registrar to the Sudder Dewanny Adawlut, published a small volume containing decisions of that Court from the year 1840 to 1848,[1] and intended as a continuation of the

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[1] In the Preface to these Reports Mr. Bellasis makes the following remarks, which I here quote as bearing upon an opinion I expressed in the "Emendenda" to my former Introduction. "The law in regard to special appeals to the Sudder Dewanny Adawlut has undergone considerable change during the period these Reports embrace; consequently a contrariety of practice may be detected in those cases which were admitted on special appeal prior to the passing of Act III. of 1843. The object of this Act, which amended the Regulation Law, was to simplify that law, and to restrict the latitude formerly allowed to suitors in appeals, who are now limited to one regular appeal in the Zillahs, from which, on cause

Reports of Selected Cases. Mr. Bellasis states that "the cases reported are for the most part the decisions of a full Court of three Judges, such being considered more authoritative as precedents. A few reports in this collection were prepared by the late Mr. Babington while he held the appointment of Deputy-Registrar to the Sudder Court.

The reports of criminal cases are few in number. The sixth volume of the cases in the Nizamut Adawlut at Calcutta is, I believe, complete: the latest part which I have received is the fifth, and contains the reports for 1849.

In January 1851 a monthly series of the decisions of the Nizamut Adawlut at Calcutta was commenced, and is still in progress.

At Madras a similar issue of reports of criminal cases determined in the Sudder Foujdary Adawlut began in the same year : marginal abstracts are added in this series.

A valuable collection of reports of cases determined in the Sudder Foujdary Adawlut at Bombay, compiled by Mr. Bellasis, and comprising decisions from 1827 to 1846, appeared in the year 1849. The cases recorded in this collection have been selected to illustrate the application of the Bombay Criminal Code, both in questions of evidence and of punishment, and also to settle doubtful points of procedure and practice. The reporter has prefixed to his work a succinct account of the various changes the constitution of the Sudder Foujdary Adawlut has undergone since its first institution.

The above are all the reports that have been received in this country since the publication of the first volume of the Digest. I have experienced considerable difficulty in classifying many of the cases contained in them, especially those comprised in the monthly collections of decisions. If, in endeavouring to sift the gold from the sand I have allowed some of the grosser particles to escape, an excuse may perhaps be found in the

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being shewn, a special appeal lies to the Sudder Dewanny Adawlut. The effect of this Act has also been to introduce a more strict observance of the rules for admitting special appeals."

difficulty of the task. I am not, however, without hope that the present volume, including as it does the most ordinary rules of practice necessary to be observed in the progress and conduct of a suit, as well as the more refined and intricate constructions of the written law, may save the judicial officers and practitioners of the subordinate Courts the laborious study of many volumes, and obviate to some extent the impediments to justice, which must be the inevitable result of their neglecting to acquire a competent knowledge of the decisions of the superior tribunals.

I have again gratefully to acknowledge the patronage of the Honourable Court of Directors; and I trust that this continuation of the Digest may deserve a repetition of the favourable opinion they have done me the honour to express with regard to the preceding volumes.

My renewed thanks to Professor Wilson are sincerely offered. I am happy to find an opportunity of once more testifying how greatly I am indebted to him for his invariable kindness and invaluable advice and assistance.

W. H. MORLEY.

15 Serle Street, Lincoln's Inn,
August, 1852.

A LIST
OF THE
ABBREVIATIONS USED IN THE DIGEST.

Abbreviations.	Name of Work.	Name of Court.
Bellasis	Reports of Civil Cases in the Sudder Dewanee Adawlut of Bombay, by A. Bellasis, Esq.	Sud. Dew. Ad. Bomb.
Coleb. Dig.	Jagannátha's Digest of Hindú Law, translated by Colebrooke. 8vo edition	——
Dáya Bh.	Dáya Bhága, translated by Colebrooke	——
Dáya Cr. San.	Dáya Krama Sangraha, translated by Wynch	——
Decis. N. W. P.	Decisions of the Sudder Dewanny Adawlut of the North-Western Provinces, recorded in English under Act XII. of 1843. 1846—1850	Sud. Dew. Ad. N. W. P.
East's Notes	MS. Notes of Cases by the late Sir E. H. East, C. J.	Sup. Cot. Calc.
Macn. Cons. H. L.	Sir F. Macnaghten's Considerations on the Hindú Law	——
Macn. Princ. H. L.	Sir W. Macnaghten's Principles and Precedents of Hindú Law	——
Macn. Princ. M. L.	Sir W. Macnaghten's Principles and Precedents of Muhammadan Law.	——
May.	The Mayukha, translated by Borradaile	——
Menu	The Institutes of Menu, translated by Sir W. Jones	——
Mit.	Mitákshará, Chapter on Inheritance, translated by Colebrooke	——
Montriou	Montriou's Reports	Sup. Cot. Calc.
Moore	Moore's Reports	Privy Council.
Moore Ind. App.	Moore's Indian Appeal Cases	Privy Council.
Mor.	Morton's Decisions	Sup. Cot. Calc.
N. A. Rep.	Reports of Cases in the Nizamut Adawlut of Calcutta	Niz. Ad. Calc.
Perry's Notes	MS. Notes of Cases, by Sir E. Perry, C. J.	Sup. Cot. Bomb.
S. A. Decis. Mad.	Decisions of the Sudder Adawlut of Madras, recorded in English under Act XII. of 1843. 1849—1850	Sud. Ad. Mad.

Abbreviations.	Name of Work.	Name of Court.
S.D.A.Decis.Beng.	Decisions of the Sudder Dewanny Adawlut of Calcutta, recorded in English under Act XII. of 1843. 1845—1850	Sud. Dew. Ad. Calc.
S. D. A. Rep.	Reports of Cases in the Sudder Dewanny Adawlut of Calcutta to the end of 1849	Sud. Dew. Ad. Calc.
1 S. D. A. Sum. Cases, Pt. i.	Reports of Summary Cases in the Sudder Dewanny Adawlut of Calcutta. 1834—1840	Sud. Dew. Ad. Calc.
1 S. D. A. Sum. Cases, Pt. ii.	Reports of Summary Cases in the Sudder Dewanny Adawlut of Calcutta. 1841—1849	Sud. Dew. Ad. Calc.
S. F. A. Rep.	Reports of Cases in the Sudder Foujdaree Adawlut of Bombay	Sud. Fouj. Ad. Bomb.
Sev. Cases	Sevestre's Reports of Cases in the Sudder Dewanny Adawlut of Calcutta to the end of 1850	Sud. Dew. Ad. Calc.
Sm. & Ry.	Smoult & Ryan's Rules and Orders.	——
Steele	Steele's Summary of the Law and Custom of Hindú Casts	——
Str. H. L.	Sir T. Strange's Elements of Hindú Law. 2d edition	——
Taylor	Taylor's Reports	Sup. Cot. Calc.
Taylor & Bell	Taylor & Bell's Reports	Sup. Cot. Calc.

ANALYTICAL

DIGEST OF REPORTS.

ABATEMENT.

I. Of Nuisance, 1.
II. Plea in Abatement.—See Pleading, 24, 25.

I. Of Nuisance.

1. Held, in an action for the removal of a nuisance, that it was not incumbent on the plaintiff to have first made a complaint to the magisterial authorities, before filing a civil suit. *Goolam Mahomed Wullude Shaik Oomer and others* v. *Wunmallee Umbadass.* 8th Aug. 1843. Bellasis, 47.—Pyne, Simson, & Hutt.

ABWAB.—See Cesses, 1.

ACCESSARIES.—See Criminal Law, 84 *et seq.*

ACCOUNTS.

I. In the Courts of the Honourable Company.
1. *Generally,* 1.
2. *Mortgage Accounts* — *See* Mortgage, 82 *et seq.*
3. *Interest on* — *See* Interest, 15, 16.

II. In the Supreme Courts — *See* Interest, 5, 6.

I. In the Courts of the Honourable Company.

1. *Generally.*

1. Under paragraph 3 of the Circular Order dated the 4th Feb. 1840, disputed accounts should be examined by an Ameen appointed for the purpose; and it was held to be irregular where a principal Sudder Ameen had himself examined accounts disputed in a suit with the assistance of an agent of the plaintiff. *Rugonath Doss* v. *Arjun Doss.* 3d Feb. 1847. 2 Decis. N. W. P. 25.—Cartwright.

2. A party suing for production of accounts, must shew that it is not through his own default that authentic copies of them are not in his possession. *Khajeh Gabriel Avietick Ter Stephanoos* v. *Gasper Malcolm Gasper and others.* 7th Aug. 1849.

S. D. A. Decis. Beng. 330—Barlow, Colvin, & Dunbar.

3. Held, that a principal Sudder Ameen having once determined that a settlement between the parties (which was denied by the defendant) had taken place, and the balance claimed had been satisfactorily proved, he was not at liberty to discuss the items of the accounts so settled, but ought to have decreed the full amount sued for. *Girdaree Lall* v. *Mt. Survee Seree.* 5th Aug. 1850. 5 Decis. N. W. P. 210.—Begbie, Deane, & Brown.

ACCOUNT BOOKS.—See EVIDENCE, 75 *et seq.*

ACT.

I. ACTS OF THE LEGISLATIVE COUNCIL OF INDIA.
1. *Act* viii. *of* 1841, 1.
2. *Act* xxxii. *of* 1839, 2.
3. *Act* xix. *of* 1841, 4.
4. *Act* xxix. *of* 1841, 5.
5. *Act* xvi. *of* 1842, 6.
6. *Act* i. *of* 1845, 7.
7. *Act* i. *of* 1846, 8.

II. ACTS OF PARLIAMENT.— See STATUTE, 1.

I. ACTS OF THE LEGISLATIVE COUNCIL OF INDIA.

1. *Act* viii. *of* 1841.

1. *A* and *B* were Hindús, joint in trade and estate; *B* died intestate, leaving a widow *C*, and a son *D*, and *A* died without issue, leaving *E* his widow (plaintiff). *D*, the son of *B*, died without issue, leaving a widow, but appointed *C*, his mother, executrix of his will, and in that right she claimed the money sought to be recovered. The defendant was ready to pay the money to either the plaintiff *E* or to *C*, and, under Act VIII. of 1841, applied for an interpleader rule. Held, that under the circumstances the Act did not apply. *Dhonemoney Dossee* v. *Protaub Sing.* 7th Nov. 1849. 1 Taylor & Bell, 77.

2. *Act* xxxii. *of* 1839.

2. Act XXXII. of 1839 does not affect claims to interest on balances of rent. *Mt. Kashipreea and others* v. *Bulram Baboo and others.* 23d March 1848. 7 S. D. A. Rep. 473. —Tucker & Hawkins.

3. Act XXXII. of 1839 is inapplicable to claims for recovery of revenue paid to Government. *Macpherson* v. *Khajah Gabriel Avietick Ter Stephanoos.* 21st June 1848. 7 S. D. A. Rep. 514.—Dick, Jackson, & Hawkins.

3. *Act* xix. *of* 1841.

4. By Sec. 14. of Act XIX. of 1841, it is provided that unless an application by the heir of the deceased proprietor to the Zillah Judge be made within six months of the decease of such proprietor whose property is claimed by right in succession, the Act is inoperative in a summary suit. *Adaitachand Mandal and others, Petitioners.* 17th Aug. 1843. 2 Sev. Cases, 131—Reid.

4. *Act* xxix. *of* 1841.

5. Act XXIX. of 1841, promulgated on the 13th Dec. 1841, was held not to apply to summary suits removed from the file of the Lower Court for neglect to proceed in the same within a specified period. *Arathoon Harapiet Arathoon* v. *Nundoolaul Dutt.* 4th May 1846. 2 Sev. Cases, 245.—Tucker.

5. *Act* xvi. *of* 1842

6. Act XVI. of 1842 was held not to apply to the province of Benares. *Rajah Ramsurn Suhae* v. *Bisheshur Gir.* 25th March 1847. 2 Decis.

N. W. P. 70.—Taylor, Thompson, & Cartwright.

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6. *Act* i. *of* 1845.

7. Held, that Sec. 9. of Act I. of 1845 is applicable to estates which may be advertised for farming leases on account of the arrears of Government revenue. *Unrodh Singh and another* v. *Rugburdyal and another.* 23d Jan. 1848. 4 Decis. N. W. P. 17.—Tayler.

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7. *Act.* i. *of* 1846.

8. Act. I. of 1846 virtually sets aside the rule contained in Sec. 6. of Reg. XXVII. of 1814. *Goordyal Chowdhree and others* v. *Nundkishore Ghose and others.* 3d Aug. 1849. S. D. A. Decis. Beng. 323.—Jackson.

9. The words, towards the close of Sec. 7. of Act I. of 1846—" other cases"—must be construed to mean miscellaneous suits, and not cases of regular suits decided on other than their merits, Sec. 35. of Reg. VII. of 1814 being repealed. *Madob Chundur Mujmoodar and others* v. *Tweedie.* 8th Aug. 1849. S. D. A. Decis. Beng. 334.—Dick, Barlow, & Dunbar.

ACTION.

I. In the Supreme Courts, 1.
- 1. *By whom maintainable,* 1.
- 2. *Discovery in aid of Action at Law—See* Practice, 26.
- 3. *Limitation — See* Limitation, 2 *et seq.*
- 4. *Parties to suits—See* Practice, 10, 11.

II. In the Honourable Company's Courts, 2.
- 1. *By and against whom maintainable,* 2.
- 2. *For what maintainable,* 37.
- 3. *For what not maintainable,* 59.
- 4. *Notice of Action,* 84.
- 5. *Actions must not comprise too much nor too little,* 88.
- 6. *Valuation of Suit,* 121.
- 7. *Transfer of Suits,* 157.
- 8. *Dismissal,* 159.
- 9. *Fictitious Suit,* 172.
- 10. *Right of Representation—See* Practice, 132 *et seq.*
- 11. *Limitation of Actions and Suits—See* Limitation, *passim.*
- 12. *Parties to Suits—See* Practice, 84 *et seq.*
- 13. *For Damages — See* Damages, *passim.*
- 14. *For Defamation—See* Defamation, 5 *et seq.*
- 15. *By Paupers—See* Practice, 437 *et seq.*

I. In the Supreme Courts.

1. *By whom maintainable.*

1. *A*, at the request of *B*, *C*, & *Co.*, made advances for an indigo factory: subsequently *B*, *C*, & *Co.*, as agents of *A*, agreed with *D* to take over the duty of advancing for the factories, and *D* wrote to *B*, *C*, & *Co.*, stating that, if they transferred to his credit Rs.1.49.683, being the sums advanced by them on *A's* account, he would, out of the proceeds of the indigo (after repaying himself his own advances and certain other charges), remit to *A* the sum of Rs.1.49.683, or as much thereof as the proceeds would enable him to send. Held, on *D* receiving sufficient to enable him so to remit, that there was such privity between *A* and *D*, as to enable him to sue *D* for money had and received. *Braine* v. *Muttyloll Seal.* 22d Nov. 1849. 1 Taylor & Bell, 97.

II. In the Honourable Company's Courts.

1. *By and against whom maintainable.*

2. One of the heirs of a judgment creditor having realized the amount

of a decree; it was held that another heir cannot summarily recover his portion of the debt from the party to whom payment has been made. The remedy is by a regular action. *Petumber Chuckerbuttee, Petitioner.* 11th May 1841. 1 S. D. A. Sum. Cases, Pt. ii. 9.—Reid.

3. *Quære,* whether an action is maintainable by the law of Bombay, in the Civil Courts, by the grantee of the exclusive privilege of *Adavi Palki, i. e.* the being carried crosswise in a palanquin on ceremonial occasions, in virtue of a grant from the ruling power to a predecessor in office, against a party who assumes the like privilege. *Sri Sunkur Bharti Swami* v. *Sidha Lingayah Charanti.* 5th July 1843.—3 Moore, Ind. App. 198.

4. In a claim to recover a certain sum of money, appropriated by the deputy-collector towards the payment of the arrears of an *Ijárah,* of which the plaintiff himself had become one of the sureties as well as the real farmer, the principal Sudder Ameen passed a decree against the estate of a minor and his adoptive mother, a disqualified female under the Court of Wards, and absolved the other defendants from the claim without their appearing to defend the suit. This decision was reversed by the Zillah Judge, and the reversal affirmed by the Sudder Dewanny Adawlut on further appeal, on the ground of the irrelevancy of the plaintiff's claim against the disqualified female and the estate of the minor, neither of whom appeared to be involved in the transaction between the plaintiff and the others. *Raumdoolaul Lushkur* v. *Gawreekanth Dhar.* 26th Aug. 1844. 2 Sev. Cases, 101.—Dick.

5. One of several coparceners may, without the concurrence of the others, sue a stranger for possession of the joint property on behalf of the coparceners generally, if the stranger profess to hold under an adverse title. *Soondernarain. Bhoonya* v. *Bhurutchurn Sutputtee.* 30th Dec. 1844. 7 S. D. A. Rep. 187.—Gordon.

6. In a suit for mesne profits against certain shareholders of lands, the sale of the lands was decreed. One of the shareholders, to save his share, satisfied the decree, and instituted a suit against the other sharers to recover what was due from them in the proportion of their shares. Held, that he was entitled in law and equity to sue those sharers who did not satisfy the decree, though they had not been included in the suit for mesne profits. *Sheetulchundur Ghose* v. *Beyrochunder Mujmooadar and others,* 30th Sept. 1845. S. D. A. Decis. Beng. 287.—Reid, Dick, & Gordon.

7. In a suit on a bond against the minor heir of the deceased obligor; it was held, that although the minor had been absolved from the operation of a decree against him in conjunction with another, in a former suit, on the ground of the plaintiff not having mentioned his minority, yet this does not bar the institution of a fresh suit by the bondholder against the minor, through his mother and guardian, for liquidation of the debt due by his parent, whose property he had inherited. *Cheydeeloll* v. *Mt. Sujna Terwarin.* 17th Aug. 1846. 1 Decis. N. W. P. 107.—Thompson, Cartwright, & Begbie.

8. Held, that a co-sharer was competent to institute a suit against the other sharers for possession of lands held by them as heirs of the original acquirer, who had appropriated them to the support of religious rites. *Beejay Govind Bural* v. *Kalee Das Dhur and others.* 18th Nov. 1846. S. D. A. Decis. Beng. 388.—Reid, Dick, & Jackson.

9. Where a party had sued for the property in certain lands as *proprietor* of the estate in which they were situate, and the Court had decided against him, as if he sued for the right as *Huwaladár,* a species of fixed-rent tenant, and it was recorded

in the decision, that whoever had the proprietary right might sue; it was held, that another suit by the same party, in which he claimed as *Málik*, or proprietor, was not barred by Sec. 16 of Reg. III. of 1793. *Casheekant Banoorjeeah Chowdree* v. *Mt. Ruttun Mala and another*. 24th Nov. 1846. S. D. A. Decis. Beng. 393.—Dick.

10. A woman sued, virtually on behalf of her son, a minor, to set aside an adoption made by her late brother's widow. Held, that she was entitled so to do, though the widow and her own mother were alive. *Gour Munnee Daseeah* v. *Parbuttee Daseeah*. 9th Dec. 1846. S. D. A. Decis. Beng. 411.—Reid, Dick, & Jackson.

11. A regular suit to contest a summary award may be brought by one of two defendants in the summary suit. *Goluck Chunder Biswas* v. *Sumboo Chunder Rae*. 15th Dec. 1846. S. D. A. Decis. Beng. 421.—Tucker.

12. Heirs are incompetent to sue where their claim *as heirs* is disputed by other parties, without having taken out a certificate of heirdom as prescribed by Act XX. of 1841. *Thakoor Dyal Tewaree* v. *Bhoop Singh and another*. 9th March 1847. 2 Decis. N. W. P. 58.—Tayler, Thompson, & Cartwright.

13. Under special circumstances, one of two parties, in whose favour a deed has been executed without specification of interests or shares, may be allowed to sue alone. *Baboo Hurree Doss and another* v. *Ramjeewun Doss and others*. 4th May 1847. 2 Decis. N. W. P. 113.—Lushington. *Bhageeruth* v. *Bhugwan Doss*. 13th May 1847. 2 Decis. N. W. P. 135.—Tayler, Begbie, & Lushington.

14. But this should constitute the exception, and not the rule; and such party cannot be allowed to sue alone, unless good and sufficient reason, satisfactory to the Court, be assigned by him for the omission of his partner to sue jointly with him.[1] *Ib.*

15. *A* sued *B* for possession on a mortgage bond, but in consequence of *A*'s having omitted to specify the nature of the tenure, he was nonsuited. *C* also sued *B* on a mortgage dated subsequently to *A*'s, and obtained a decree and possession thereon. *A* then brought a suit against *B* and *C*. Held, on special appeal, that *A*'s suit was properly brought, and that it was not barred by the decree in favour of *C*, as *A* was not a party to *C*'s suit, nor would such decree prevent the property from passing into *A*'s hands, should his deed be established.[2] *Asa Ram and another* v. *Lulloo and others*. 15th June 1847. 2 Decis. N. W. P. 187.—Tayler.

16. An *Ism Farzi* having brought a suit for possession of lands for the unexpired portion of the farm of such land, and dying *pendente lite*, the actual owner of the lease cannot be allowed to proceed with the suit on the ground of his ownership, as by the practice of the Courts it is only the heir or representative of a plaintiff who can succeed to the right of carrying it on on the plaintiff's death. *Gunga Geer* v. *Raja Jugut Bahadoor Singh*. 26th July 1847. 2 Decis. N. W. P 218.—Tayler, Begbie, & Lushington.

17. A single suit may be brought to reverse several awards by the magistrate, under Act IV. of 1840, ousting parties from lands, by such

[1] And if the proof of the necessity of suing alone, which the plaintiff is thus obliged to produce, or the claim itself, affect in any way the interests of the party who has refused to join in the suit, that party should be made a defendant, or the plaintiff is liable to be nonsuited

[2] In determining the question of the validity of *A*'s mortgage bond, it does not follow that the decision in favour of *C* would be altogether set aside. It would remain valid as between *B* and *C*; and on satisfaction of *A*'s claim, *C* might eventually regain possession. The effect of a decree in *A*'s favour would be merely to take the property from *C*, and place it with *A*, until his claim should be satisfied.

parties, they claiming the lands as belonging to their *Patní Talook,* and the defendants as appertaining to their *Talook. Ram Ruttun Rae and others, Petitioners.* 2d August 1847. 1 S. D. A. Sum. Cases, Pt. ii. 114.—Hawkins.

18. Where a decree was pronounced incapable of execution, on the ground of indistinctness, the defect lying in the petition of plaint; it was held, that all the proceedings in the trial were annulled, and the decree holder was as much entitled to bring a fresh suit as if his claim had been dismissed on default. *Seyud Sujjad Alee and another* v. *Baboo Dumodhur Doss.* 12th Aug. 1847. 2 Decis. N. W. P. 253.—Lushington.

19. As a general rule, all the parties in whose favour a deed is executed without specification of shares are required to *join* in the *plaint;* but whenever a sufficient reason is given for suing separately, the plaintiff has a right to be heard; and where *A* and *B* had lent money on mortgage "in halves;" it was held, that *A* was entitled to sue for his half of the mortgage money singly, and without making his sharer a defendant. *Banee Behadoor Singh and others* v. *Gosain Phoolgeer.* 17th Aug. 1847. 2 Decis. N. W. P. 269.—Tayler, Begbie, & Lushington.

20. The shareholders in two different estates being the same parties, one of their number liquidating the Government arrears due on both may sue his defaulting co-sharers in one action. *Juggut Chunder Mookoorjea and others, Petitioners.* 4th Sept. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 118.—Tucker, Barlow, & Hawkins.

21. A party is not debarred from urging a claim of right in a regular suit because such a right was not formerly conceded to him when he urged it in an *Uzardári* petition filed by him in a miscellaneous case. *Baboo Hurree Doss* v. *Naick Jee and another.* 20th Jan. 1848. 3 Decis. N. W. P. 29.—Cartwright.

22. Lease for a term of years of a *Pergunnah* in Bengal, to *A*, to which *B* became surety for the due performance of the conditions, and afterwards a co-partner with *A* in the lease. Before the expiration of the demised term, the representatives of the lessors evicted the lessee from the *Pergunnah.* Held, that a suit would lie by *B*'s representatives against the representatives of the lessor for ouster from the lease, although they were not parties to the contract with the original lessors. *Raja Burdakanth Roy* v. *Aluk Munjooree Dasiah and others.* 18th Feb. 1848.—4 Moore Ind. App. 321.

23. The receipt of a portion of the purchase-money by one shareholder is no bar to the action of another sharer, not taking his share of such purchase-money, to contest a sale for arrears of revenue. *Shureeutoola Chowdhree and others* v. *Deputy Collector of Pubna and others.* 23d Mar. 1848. S. D. A. Decis. Beng. 220.—Dick.

24. A *Zamíndár* cannot sue a *Ním Ousut Talookdár* for arrears of rent due by the latter to the *Ousut Talookdár*, the *Ním Ousut Talookdár* being under no engagement with the *Zamíndár*, but answerable only to the *Ousut Talookdár. Ruttun Mulla Dibeea and another* v. *Kurreemonissa and another.* 1st July 1848. S. D. A. Decis. Beng. 626.—Tucker, Barlow, & Hawkins.

25. *A*, the widow of *B*, made over her husband's half share in a *Talook* to *C*, *B*'s cousin, by a deed of relinquishment, which was upheld by the Courts, but so as not to affect the interest of *B*'s heirs. The rights of *C* were sold for a defaulting stamp-vendor, for whom he had become surety, and the purchaser took possession of the entire *Talook. A* sued the purchaser for her half share, but dying before the suit was determined, her grandsons took her place. The suit was then thrown out, with a reservation to the grandsons to institute a fresh suit. This

was, however, overruled by the Court, and the original suit restored to the file, to be carried on at the suit of the grandsons, whose heirship was not opposed. *Russik Lal Sein and others* v. *Collector of Calcutta and others.* 1st July 1848. S. D. A. Decis. Beng. 627.—Tucker & Barlow (Hawkins' Dissert.)[1]

26. A party having instituted a summary suit for balance of rent on account of the current year is not thereby debarred from afterwards instituting a regular suit for balances due on account of previous years, which may be due to him, and for which he cannot have a summary action. *Ramgopal Mookerjea* v. *Gholam Durbesh Jowur and others.* 24th June 1847. 7 S. D. A. Rep. 348.—Tucker. *Ramgopaul Mookerjee* v. *Junmjoy Moonshee.* 30th Dec. 1848. S. D. A. Decis. Beng. 896.—Barlow, Jackson, & Hawkins.

27. *Quære,* whether one of two persons, who have obtained a lease of certain *Mauzas* sued for, can bring his action singly, the other lessee being an objecting party to the suit in the Court of first instance. *Madho Misr* v. *Bissashur Pershad and others.* 26th March 1849. 4 Decis. N. W. P. 64.—Tayler, Thompson, & Cartwright.

28. Although, as a general principle, all the parties in whose favour a deed is executed should sue conjointly to establish a claim depending on the deed, yet there may be circumstances which might render this course impracticable; and where it was urged in special appeal that the defendants were entitled to a nonsuit, seeing that the plaintiff's joint purchaser was not a co-plaintiff in the suit; it was held, that as the objection was never pleaded in either of the lower Courts, and moreover did not involve any question of law, there was no necessity for interfering with the decision of the Lower Court on that ground.[2] *Mohumed Ali and others* v. *Shewa Singh.* 30th April 1849. 4 Decis. N. W. P. 98.—Thompson, Begbie, & Lushington.

29. Certain members of a Hindú family, not having opposed the suit of a third party to obtain possession of their shares of the ancestral property, nor then contradicting the assertion of their relatives (now litigating with them) of such property being exclusively theirs, were held not to be barred from suing for their share, and from pleading that the property was jointly acquired. *Bhyrub Chundur Mujmoodar and others* v. *Nubeen Chundur Mujmoodar and another.* 20th June 1849. S. D. A. Decis. Beng. 213.—Dick, Barlow, & Colvin.

30. No action founded on a deed with clauses of champerty can be brought by or against a champertor. *Andrews* v. *Muharajah Sreesh Chundur Raee.* 9th Aug. 1849. S. D. A. Decis. Beng. 340.—Dick, Barlow, & Colvin.

31. *A* sued on his own behalf, and as guardian of *B* and *C,* his minor cousins, to redeem a mortgage. The suit was dismissed on the ground that he had no right to sue, being illegitimate, and not the lawful heir of the mortgagor. Held, that such dismissal was irregular, as, even allowing that he was not the heir, it did not *necessarily* follow that he was not the guardian of his cousins, in which case he would be clearly competent to sue at least on *their* account, if not on *his own.* *Pirthee Singh* v. *Roodur Singh.* 11th Sept. 1849. 4 Decis. N. W. P. 306.—Begbie.

32. A party selling an indigo factory, "with all outstanding ba-

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[1] Mr. Hawkins was of opinion that, as the suit of the widow could not be sustained, she having parted with her life interest, it was rightly thrown out; and her heirs, or rather the heirs of her husband, should have instituted a fresh suit after her death.

[2] And see the case of *Banee Behadoor Singh* v. *Gosain Phoolgeer* Suprà pl. 19.

lances, and sums *of money due and owing by Ryots and others to the aforesaid factory, or to the former proprietors,"* cannot sue for his personal benefit upon any interest relating to the factory. *Goytree Dibbea* v. *Suroop Chundur Sircar and others.* 20th Dec. 1849. S. D. A. Decis. Beng. 479.—Barlow, Colvin, & Dunbar.

33. A plaintiff, in selling his rights in a property, cannot, as against third parties, reserve to himself the obligation and power of carrying on suits regarding that property in his own name. *Gunga Purshad Sahee* v. *Madhopurshad Sahee and others.* 29th Jan. 1850. S. D. A. Decis. Beng. 6.—Barlow, Colvin, & Dunbar.

34. Semble, An action for damages on account of an inundation caused by the blocking up of a channel in a certain tank belonging to a village, should be brought against the proprietors of the village, and not against the cultivating *Ryots. Moorugum and others* v. *Vencatasiengar and others.* 1st July 1850. S. A. Decis. Mad. 39.—Thompson.

35. The widows of a deceased Rájah agreed to pay a certain portion of their late husband's debts by instalments, in consideration of the assignment of certain lands and a money allowance for their maintenance by his brother, who was the Rájah's heir and representative, and to make over to him the creditors' acquittances for the amount. Held, that on their failing to observe the conditions of the agreement, the brother, as heir and representative of the late Rájah, was entitled to bring his action against them on the agreement, to compel the observance by them of its conditions. *Rajah Dummur Singh* v. *Ranee Sudosun and another.* 15th July 1850. 5 Decis. N. W. P. 176.—Begbie, Deane, & Brown.

36. Where a widow has formally consented to the succession of a party, whether as a natural born or an adopted son, to the estate of her husband, a collateral heir is competent to sue to contest such succession during the lifetime of the widow. *Bhyrub Chundur Chowdhree* v. *Kalee Kishwur Raee and others.* 3d Aug. 1850. S. D. A. Decis. Beng. 369.—Colvin.

2. *For what maintainable.*

37. Where the defendant had obtained a decree, in a separate transaction, on a bond, against the plaintiff; such decree was held, reversing the decision of the principal Sudder Ameen, not to bar an action by the plaintiff for an amount embezzled by the defendant from the shop of the parties, joint traders at the time. *Ghureeb Chund* v. *Akul Zurgur.* 12th March 1845. S. D. A. Decis. Beng. 50.—Rattray.

38. Property having been decreed may become the subject of a fresh suit between the successful parties to the action in which the decree was passed, for the adjustment of their respective shares in such decree. *Nadir oon Nissa Chowdrain* v. *Pran Koonwur Birmunee and others.* 16th May 1845. 7 S. D. A. Rep. 207.—Tucker & Reid.

39. An order of the Sudder Dewanny Adawlut confirming an order passed in the inferior Court, added, "if the respondent (the present plaintiff) considers himself aggrieved, he may bring a regular suit." Held, that the expression quoted could not be construed to give any special leave to bring a new suit to contest any point already disposed of.[1] *Budroo Rebelho and others* v. *Budroo De Silva and others* 25th Nov. 1845. S. D. A. Decis. Beng. 435.—Jackson.

40. Plaintiff sued to prove his right to irrigate his lands from a certain water-course. Held, that he was justified in bringing his suit at

[1] See Construction No. 1129, dated the 9th Feb. 1838.

once into the Civil Court, to have his right formally and finally investigated, although he did not, as directed by the magistrate on a petition from some of his (plaintiff's) servants for permission to irrigate from the water-course, institute a suit under Act. IV. of 1840. *Mohun Ram Tewaree* v. *Lalla Bukhoree Lall and others.* 6th June 1846. S. D. A. Decis. Beng. 213.—Reid.

41. A summary order for the sale of land in execution of a decree, though such order be made in disallowance of an application to prevent the sale, is no bar to the institution by the applicant of a regular suit to cancel the sale. *Damoo Mytee* v. *Durpnarain Pal and others.* 20th Feb. 1847. S. D. A. Decis. Beng. 58.—Tucker.

42. Where indigo crops had been forcibly cut and taken by other than the engaging party, it was held, that a civil action for damages would lie under Sec. 3 of Act X. of 1836.[1] *Hudson* v. *Mascarenhas.* 2d June 1847. S. D. A. Decis. Beng. 190. —Dick & Jackson. (Hawkins dissent.)

43. An action will lie for damages and for the recognition of the plaintiffs' privileges, as the head of their tribe, in the discharge of which they were interrupted and resisted by the defendants of the same tribe as themselves. *Rubee Das Manjee and others* v. *Kowul Baboo.* 29th June 1847. S. D. A. Decis. Beng. 290. —Tucker.

44. A party paid the amount of a decree given against himself and co-sharers jointly and severally, being for sums due on an estate in which their interests were *several* and distinct. On a suit to recover, it was held, that he could only claim from the co-sharers the amount due from each in proportion to his share; the plea of having paid the joint liabilities conferring no right to recover otherwise, as he made such payment as much to secure his own interests as theirs. *Achumbhit Lal* v. *Govind Purshaud Sing and others.* 23d Aug. 1847. S. D. A. Decis. Beng. 467.—Rattray, Dick & Jackson.

45. A party failing in an action on a special ground is not thereby precluded from preferring a claim to the same property under the general law of inheritance. *Mt. Radha and others* v. *Mt. Asoo.* 30th Aug. 1847. 2 Decis. N. W. P. 304.—Tayler, Begbie, & Lushington.

46. A suit for the estate of a deceased Hindú, under the general law of inheritance, by the survivor of his two widows, was held not to be barred by her having formerly sued on a special ground, which failed. *Ranee Hurreepreea Dibbea* v. *Bhyrub Inder Narain Rae and others.* 4th Dec. 1847. 7 S. D. A. Rep. 414.—Hawkins.

47. The Circular Order of the Nizamut Adawlut, dated the 10th Dec. 1830, is no bar to the institution of a suit for the removal of a *Hát.* *Kumul Lochun Ghose and others* v. *Bhagiruttee Dibbea.* 5th Feb. 1848. 7 S. D. A. Rep. 432. —Tucker, Barlow, & Hawkins.

48. Where a party has entrusted property to another, and the latter has failed to restore it, but has agreed to pay him the value of it, an action may be maintained upon such engagement, even though the depositor may have subsequently taken criminal proceedings against the other in respect of the transaction. *Bhunjun Mundul* v. *Gobra Mundul and others.* 17th Feb. 1848. S. D. A. Decis. Beng. 94.—Hawkins. *Doorga Munnee* v. *Ram*

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[1] In the case of *Rouse* v. *Haig*, 2 S. D. A. Rep. 69, the claim of the party with whom the contract of the *Ryot* was made, was held to lie only against the *Ryot*, and not against the other party, who forcibly carried away the crop. But this was before the issue of Act X. of 1836; and that Act would appear to have been passed with a view to supply this defect in the law, and to enable the sufferer to bring his claim against both the *Ryot* and the person so carrying away the plant by force or otherwise.

Chundur Raee and others. 6th Nov. 1849. S. D. A. Decis. Beng. 423.—Jackson.

49. Failure to bring a summary action to contest a demand of rent does not bar the plaintiff from his remedy by a regular action. *Sheikh Bundhoo* v. *Gouree Purshad and others.* 7th March 1848. 7 S. D. A. Rep. 444.—Hawkins.

50. In a suit to ascertain the boundaries between village *A* and village *B*, a map was prepared, and was adopted by the decree, which embraced not only the boundaries between *A* and *B*, but likewise between *A* and a third village *C*, which were not then in dispute. A suit having been subsequently brought to ascertain the boundaries between *A* and *C*, it was decided (though the parties to both suits were the same) that the former decree was binding only as to the immediate point at issue in the former suit; and that as the laying down any boundaries between *A* and *C* was superfluous, it did not preclude a full investigation in the second suit. *Rooderpurshad Mookerjee and others* v. *Parushnath Singh Chowdhree and others.* 11th March 1848. S. D. A. Decis. Beng. 184.—Tucker, Barlow, & Hawkins.

51. It is no bar to a civil action for money forcibly taken, that a criminal prosecution had not been previously preferred. *Bukshee and another* v. *Reazooddeen and others.* 15th March 1848. S. D. A. Decis. Beng. 202.—Tucker.

52. A second suit is not barred where the cause of action is different, though the subject-matter and the persons sued may be the same as in the former. *Baboo Ramlochun Singh* v. *Hyder Ali Khan.* 29th March 1849. S. D. A. Decis. Beng. 85.—Dick, Barlow, & Colvin.

52 *a.* Former proceedings in a cause having been held in the miscellaneous department, are open to inquiry in a regular action. *Sheikh Mukdoom Buksh and others* v. *Mt. Roushun and others.* 5th Dec. 1849. S. D. A. Decis. Beng. 432—Barlow, Colvin, & Dunbar.

53. If a former decree, made in a suit between *A* and *B*, has awarded to *A* the possession of land, or has recognized his possession of it in one capacity (such as that of *Mukarraridár*), this award or recognition will not operate as a bar to a subsequent suit between the same parties where a different interest in the same property is the subject-matter of the suit. *Joy Chundro Raee* v. *Bhyrub Chundro Raee and another.* 18th Dec. 1849. S. D. A. Decis. Beng. 461. — Barlow, Colvin, & Dunbar.

54. Held, on an action by one co-sharer in *Deowattar* land against another co-sharer, for the recovery of money alleged to have been laid out in religious worship connected with the tenure in excess of the share of the plaintiff, co-sharer, that such an action will lie; but the decision must depend upon the particulars and conditions of the tenure, whether as establishing a mutual accountability between the co-sharers, or leaving each responsible only for the appropriation of his own share of the profits. *Tarapurshad Raee* v. *Ameerchand Baboo and others.* 2d May 1850. S. D. A. Decis. Beng. 168. — Dick, Jackson, & Colvin.

55. In a suit founded exclusively on a right of occupancy, the fact that the plaintiff has not a proprietary interest in the land is no reason why he should not assert his right of occupancy. *Neerman Singh* v. *Bheenuk Singh.* 23d May 1850. S. D. A. Decis. Beng. 225.—Dick, Jackson, & Colvin.

56. Subsequently to a right of succession becoming vested in certain heirs, a portion of the lands was resumed and settled with one of them; held, that the form of action by the other heirs should put in issue *their right to participate in the settlement*, and admit of proof that

the settlement was made on the ground of the party admitted to settlement being at the time in possession, *as heir*, of the other estates of the deceased. *Mt. Chundra Buttee and another* v. *Mt. Ambhoo Buttee and others.* 26th June 1850. S. D. A. Decis. Beng. 312.—Barlow & Colvin.

57. A miscellaneous order for the purposes of a suit as to the right of representation in that suit is no bar, under Sec. 16. of Reg. III. of 1793, to a separate suit for the purpose of obtaining a regular adjudication on a claim of title. *Sheikh Hossein Buksh* v. *Juseem-o-Nissa and others.* 8th July 1850. S. D. A. Decis. Beng. 346.—Colvin & Dunbar.

58. It is not necessary for a *Zamíndár* suing to assess the lands of a *Ryot* at Pergunnah rates, to lay his suit to cancel a *Potta* pleaded by the *Ryot*, and held good in previous summary proceedings. The *Zamíndár* may prefer his claim generally, and it is for the *Ryot* to plead and prove his special *Potta*. *Ramkoomar Mustofee and others* v. *Rammohun Purdhan.* 26th Dec. 1850. S. D. A. Decis. Beng. 603.—Dick, Barlow, & Colvin.

3. *For what not maintainable.*

59. Held, that an action for arrears of rent against a large portion of the inhabitants of a village, who are not otherwise connected with each other than as merely dwelling on the same spot, and do not jointly cultivate any piece of land, is untenable. *Gaurchandrapal and others* v. *Khwaja Aleemullah.* 12th Aug. 1842. 2 Sev. Cases, 11.—Lee, Warner, & Reid.

60. A collector's decree on a summary suit for arrears of rent, forms no ground of action against a third party. *Ranee Kummul Kowaree* v. *Kungal Chunder Mojoomdar.* 5th Dec. 1844. 7 S. D. A. Rep. 186.—Tucker, Reid, & Barlow.

61. No suit can be entertained to call in question what has been already regularly decreed. *Government Salt Agent* v. *Matadeen Thakoor and others.* 2d Sept. 1845. S. D. A. Decis. Beng. 286.—Dick. *Ram Kant Sein and others* v. *Raj Kishwur Raee.* 11th Feb. 1846. S. D. A. Decis. Beng. 44.—Reid, Dick, & Jackson.

62. Where a Sudder Judge had, in dismissing a former suit of the appellants, finally settled the permanency of the rent-roll between the parties; it was held, that a suit was untenable by the appellants to new assess the tenure on the ground of its not being a *Mukarrarí* or *Istimrárí* tenure, the appellants being the heirs of those who gave the rent-roll. *Nubkoomar Chowdhree and others* v. *Sooburn Beebee and others.* 16th March 1846. S. D. A. Decis. Beng. 102.—Dick.

63. A suit, resting upon fraudulent agreements, avowedly made to defeat the course of justice, cannot be entertained.[1] *Roushun Khatun Chowdrain* v. *Collector of Mymensingh and others.* 24th March 1846. S. D. A. Decis. Beng. 120.—Dick. *Brimho Mye Dibea and others* v. *Ram Dolub Hor.* 9th July 1849. S. D. A. Decis. Beng. 276.—Barlow, Colvin, & Dunbar.

64. A summary suit for increase of rent is not cognizable under Sec. 10. of Reg. VIII. of 1831. *Kalee Purshad Pandee* v. *Raja Bidanund Singh Bahadur.* 23d Nov. 1846. S. D. A. Decis. Beng. 391. Rattray, Tucker, & Barlow.

65. *A*, the plaintiff, sued in the Court of the principal Sudder Ameen as heir of *B* deceased; the defendant *C* pleaded that the property had been made over by *B*, during his lifetime, to his wife *D*, in payment of a lac of rupees and one gold mohur due to her on a marriage settlement, and moreover, that *A*'s suit as instituted was inadmissible,

[1] And see the case of *Ramindur Deo Race* v. *Roopnarain Ghose.* 2 S. D. A. Rep. 118.

she having instituted a similar suit previously, which had been dismissed by the Sudder Ameen, who decided that *B* had, as pleaded by the defendant, acknowledged the settlement on his wife, and that her possession of his estates with her son in lieu of the settlement, as made over to her by her husband in his lifetime, was proved; and that therefore the plaintiff must first sue to set aside the settlement before she could claim to inherit. The Principal Sudder Ameen gave a decree in favour of the plaintiff; but the decree was overruled on appeal by the Judge, whose decision was confirmed by the Sudder Dewanny Adawlut, on the ground that the suit was barred under Sec. 10. of Reg. II. of 1803; as, whether the order of the Sudder Ameen was right or wrong, it could not be called in question, and had become, to all intents and purposes, a final one, no appeal having been preferred against it by the plaintiff; and as she did not appeal, she was bound to recognize the order, and conform to it, on reinstituting her suit, and not, in opposition to it, to again institute her suit in exactly the same form as she did before. *Wuzeer-oon Nissa Begum* v. *Sufder Alee Khan and another.* 18th Dec. 1846. 1 Decis. N. W. P. 257. — Thompson & Cartwright. (Tayler, dissent.)[1]

[1] Mr. Tayler, in recording his dissent, observed—"In my opinion the suit is not barred by Sec. 10 of Reg. II. of 1803." The Sudder Ameen, in his decree, observes that he could not determine on the validity of the marriage settlement, he not having jurisdiction in the matter; yet the order, which is considered to prevent the present suit from being entertained, is based on the assumption of its validity. The Sudder Ameen has no authority to declare that a suit shall be brought by a plaintiff in any particular way; and his having done so in this case cannot bar a new suit from being instituted in any way the plaintiff may choose to bring it. It was beyond the Sudder Ameen's competence to try the question of the validity of a marriage settlement for one lac of rupees and one gold mohur, and any order, founded on the assumed validity of that deed, is contrary to law.

66. An action merely to set aside a forged document filed before the revenue authorities will not lie in the Civil Courts; the revenue authorities, under Cl. 5. of Sec. 14. of Reg. XVII. of 1817, being alone competent to inquire into such matters. *Debee Churn Biswas* v. *Kishen Kishwur Raee Chowdhree and others.* 21st Aug. 1847. S. D. A. Decis. Beng. 455. — Tucker, Barlow, & Hawkins.

67. Plaintiff sued for possession of a fractional portion of a cultivating *Ryot's* holding in a joint undivided estate, making his cosharers defendants. Held, that a claim in that form must be rejected, as a decree, if passed in the plaintiff's favour, could not be executed without the consent of all the sharers; and if the co-sharers (defendants) did not wish to disturb the *Ryot's* possession, the plaintiff could not do so. *Broderick* v. *Hurmohun Raee.* 11th Sept. 1847. S. D. A. Decis. Beng. 536.—Tucker, Barlow, & Hawkins.

68. An action for the establishment of an hereditary and proprietary right in an estate sold for arrears of revenue cannot be entertained so long as the sale remains undisturbed. *Dabee Pershad* v. *Madhoo Singh and another.* 14th Feb. 1848. 3 Decis. N. W. P. 49. —Tayler, Thompson, & Cartwright.

69. *A* obtained a decree against *B* for a large sum, and sold his right under the decree to *C*. After payments to a considerable amount from time to time, *C* sued out execution for Rs.2501, which he alleged to be still due. *B* pleaded payment in full, but the Judge passed a summary order for the sale of his property to realise the said sum; and rather than let his property be sold, he paid the amount, and brought a suit against *C* to prove payment of the amount decreed against him in full, and obtained a decree from the Principal Sudder Ameen. On appeal, the Judge dismissed the claim

as not cognizable in a regular suit under Construction No. 1129. Held, on special appeal, on reference to the proceedings held in execution of the original decree, that as there was no dispute as to the several sums paid in by the appellant, the dispute being as to the mode of calculating interest on the amount decreed; and that as it was a dispute between the parties regarding a matter involved in the decision; that the Judge's decree was correct, and the claim not cognizable under the said Construction. *Baboo Koonwur Singh* v. *Rameshwur Dut.* 8th April 1848. S. D. A. Decis. Beng. 295.—Tucker, Barlow, & Hawkins.

70. A suit cannot be instituted in the *Hazáríbágh* agency to compel a *Ryot* to give a *Kabúliyat. Seetaram Mehtoon* v. *Deochund Lal.* 15th April 1848. S. D. A. Decis. Beng. 317.—Tucker & Hawkins.

71. An action will not lie against the magisterial authorities for the recovery of a ferry, of which possession has been taken by them under Reg. VI. of 1819. *Government* v. *Brijsoondree Dassee and another.* 18th May 1848. 7 S. D. A. Rep. 497.—Tucker, Hawkins, & Currie.

72. A purchaser of an estate from a widow having sued to set aside an adoption made by her subsequent to the sale, instead of to establish the validity of his purchase, was nonsuited. *Ranee Unnopoorna Dibbea* v. *Nund Lal Dutt.* 1st June 1848. S. D. A. Decis. Beng. 497.—Jackson, Hawkins, & Currie.

73. A suit by minors for the mesne profits of an estate, let by their guardian to a farmer, against the guardian and farmer, will not lie, as they should rather have sued their guardian for an adjustment of accounts. *Gunga Purshad and another* v. *Bujrung Purshad and others.* 24th July 1848. S. D. A. Decis. Beng. 712.—Rattray, Dick, & Jackson.

74. *A* gave an acknowledgment to *B* for money lent for payment of revenue making either *A* or *C* liable, as either the one or the other might be found to be a Government defaulter. The money not having been repaid, *B* sued *A*, and, *pendente lite*, they appointed arbitrators to decide this particular point: the arbitrators absolved *A*, and declared *C* liable for the sum. The Moonsiff thereupon dismissed *B*'s claim in conformity with the award and with the opinion of the *Patwárí* of the village, both of which declared that *C* should pay. No appeal from the Moonsiff's decision having been preferred, it was held, that such decision was final, and that no new suit could therefore be brought for the same sum against *A*. *Bickurmajeet* v. *Thummun Singh.* 9th Jan. 1849. 4 Decis. N. W. P. 13.—Tayler, Thompson, & Cartwright.

75. A claim was made for possession of one-fourth of an estate on the ground that the defendants, co-sharers, had fraudulently caused an arrear of revenue, and had the estate transferred in form to one of their own body. Held, that such action, being brought virtually to set aside a farming lease legally given under the provisions of Sec. 4. of Reg. IX. of 1825, will not lie, as the transfer once legally made by the Collector cannot be set aside. *Neer Mull Singh* v. *Kehur Singh and others.* 30th July 1849. 4 Decis. N. W. P. 257.—Thompson, Begbie, & Lushington.

76. In a suit for an amount certain, on proof offered, a claim for the production of papers of account cannot be maintained. *Khajeh Gabriel Avietick Ter Stephanoos* v. *Gasper Malcolm Gasper and others.* 7th Aug. 1849. S. D. A. Decis. Beng. 330.—Barlow, Colvin, & Dunbar.

77. *A* brought a suit in 1825 before the Moonsiff for certain lands, and obtained a decree in his favour; but on appeal being made, the *Pandit* reversed the decree. After this a special appeal, or rather application for appeal, was made, but apparently rejected; but after considerable petitioning, the special appellant was

allowed in 1836 to bring a suit *de novo*. This new suit was tried by the *Pandit*, who gave judgment in *A's* favour, which judgment was confirmed by the Acting Assistant Judge. Held by the Sudder Adawlut, that the admission of the second suit in 1836 for the same cause of action as had been litigated and disposed of in 1825 was clearly opposed to Sec. 9. of Reg. II. of 1802. *Ekkanatha Appoony and another* v. *Poonarama Putter*. 8th Nov. 1849. S. A. Decis. Mad. 105.—Thompson & Morehead.

78. A suit for a number of patches of land, stated to be situated within certain larger defined areas, but not having their own boundaries defined, was disallowed by an orderof nonsuit, as no decree can be executed where the subject-matter of the claim is not described with certainty. *Jye Sunkur Das and others* v. *Ram Kunhaee Raee and others*. 12th March 1850. S. D. A. Decis. Beng. 43.—Barlow, Colvin, & Dunbar. *Mirza Mohummud Beg* v. *Udeenath Dass*. 27th June 1850. S. D. A. Decis. Beng. 316.—Barlow, Jackson, & Colvin. *Kaunth Lall* v. *Koonjull Singh and others*. 20th Aug. 1850. S. D. A. Decis. Beng. 415.—Barlow & Dunbar. (Dick dissent.)

79. A suit resting on an alleged right to be summoned at all marriages, and to receive, when so summoned, a *Pánbatta*, or present of *Pán* from members of a particular community, is not one upon which a decretal order could be enforced by our Courts. *Ram Guttree Biswas and others* v. *Mahadeo Bunnick and others*. 21st March 1850. S. D. A. Decis. Beng. 64.—Barlow & Colvin. (Dick dissent.)

80. A plaintiff having sued on a special title on a document, cannot, in the same suit, upon failure to prove his special title, be allowed to urge his claim on the general ground of inheritance. *Peetumbur Mookerjee* v. *Seebchundur Chatterjee and another*. 20th May 1850. S. D. A. Decis. Beng. 210.—Dick.

81. Held, that, on the principle of Sec. 12. of Reg. III. of 1793, a second suit cannot be brought in *the same* Zillah where one has already been instituted on the same grounds, and between the same parties, and for precisely the same subject-matter. *Prosonath Raee* v. *Rajah Inder Narain Adhikaree and others*. 30th May 1850. S. D. A. Decis. Beng. 248.—Barlow, Jackson, & Colvin.

82. Even where an action may be maintainable against a Collector for payments improperly made by him in satisfaction of a demand against a Ward, no action will lie for the recovery of the money against the parties who merely applied for and received the amount of their demand. *Rajah Anundnath Raee* v. *Collector of Rajshahye*. 17th June 1850. S. D. A. Decis. Beng. 301. Barlow, Jackson, & Colvin.

83. Plaintiffs being dissatisfied with the order of a Court in execution of a decree which allowed interest to the defendant between the date of a bond and the institution of a suit, first appealed in the miscellaneous department to the Sudder Dewanny Adawlut, where it was upheld, and subsequently brought their suit to set it aside. Held, that such a suit was inadmissible, as, under Construction No. 1129 and paragraph 9 of the Circular Order of the 11th Jan. 1839, such order could not be considered as constituting a new cause of action. *Mirza Rahut Bukht and others* v. *Narain Dass*. 23d Sept. 1850. 5 Decis. N. W. P. 374.—Begbie, Deane, & Browne.

4. *Notice of Action.*

84. Held, that the eight days' notice required by Sec. 12., and the proceedings to be recorded under Sec. 10. of Reg. XXVI. of 1814, must be repeated, if the parties to a suit be allowed to file any pleadings subsequently to the above provisions

of the law having been once already attended to. *Gunsa Ram Dobeh and others, Petitioners.* 19th Feb. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 65.—Reid.

85. The usual notice of a suit having been duly served, it is no excuse for a woman of rank to say that she was ill when the notices were issued, and that she had, therefore, no intimation of the suit having been brought against her, as she was not a person of such a description as to render her personal agency necessary to carry on a suit in Court, and her *Mukhtárs* might have acted for her in the usual manner. *Ranee Bhoobun Mye Dibea* v. *Collector of Mymensingh.* 25th May 1848. S. D. A. Decis. Beng. 473.—Jackson.

86. Parties having answered to a suit brought against them as inhabitants of one place, were not allowed, in a subsequent suit brought within about two months by the same plaintiff, to raise a plea of insufficiency of notice, on the ground that their actual fixed residence was at another place. *Nyttya Kali Dibbea and another* v. *Pertab Singh Baboo.* 9th May 1849. S. D. A. Decis. Beng. 141.—Dick, Barlow, & Colvin.

87. A plea of nonservice of notice of suit, raised as a ground of appeal, should be inquired into by the Appellate Court, and not remanded to the Lower Court for that purpose. *Umbikapershad Raee* v. *Raee Kumud Dibbea.* 11th July 1849. S. D. A. Decis. Beng. 285.—Jackson.

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5. Actions must not comprise too much nor too little.[1]

88. Property claimed under separate deeds must be separately sued for; but any number of decree-holders, attaching the same property, may be sued in the same plaint by a party laying claim to such property. *Jhomari Bibi, Petitioner.* 31st Jan. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 23.—Reid.

89. Held, that the Circular Order No. 29 of Vol. III., dated the 11th Jan. 1839, does not prescribe that a plaintiff suing only for a portion of his claim must be necessarily nonsuited. But if a second action be instituted for property which ought to have been included in the first plaint, the question would arise whether it could be heard. *Bholanath Baboo, Petitioner.* 20th June 1842. 1 S. D. A. Sum. Cases, Pt. ii. 42. 2 Sev. Cases, 269.—Reid. *Doolea Ghosain* v. *Bhoodun Bewa and others.* 18th July 1846. S. D. A. Decis. Beng. 287.—Reid.

90. A claim by inheritance was dismissed under Circular Order No. 29 of the 11th January 1839, being for property which should have been included in a previous suit.[2] *Rae Hurree Kishen* v. *Rajah Putnee Mul.* 18th Jan. 1847. 7 S. D. A. Rep. 287.—Rathay, Dick, & Jackson.

91. There is nothing illegal in suing separately for possession of rent-paying and rent-free land, and it will not be considered as splitting the ground of action. *Maharajah Rooder Singh and others* v. *Mutoornath Ghose.* 8th Mar. 1845. S. D. A. Decis. Beng. 45.—Gordon.

92. Held, that the ground of action being one, a suit can be entertained, notwithstanding that distinct claims be set up by different defendants; in other words, the validity of a plaint is not affected by the number of issues in defence. *Mt. Nujumonisa and others* v. *Shaik Mahomed Bheekun.* 18th Mar. 1846. S. D. A. Decis. Beng. 108.—Reid,

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[1] And see Tit. PRACTICE, pl. 163 *et seq.*

[2] This case disposed of the question raised in the case of *Bhola Nath Baboo, Petitioner.* It is to be observed that no suit could be had upon the plaint in this case. But with reference to the sense in which the terms *nonsuit* and *dismissal* are taken by the *Mofussil* Courts, the former to imply that the action may be again instituted in an amended form; the latter, that it cannot; the order in this case must be considered to be one of dismissal, rather than of nonsuit.

Dick, & Jackson. *Mt. Oma Chowdrain and another* v. *Mt Indurmunee Chowdrain and others.* 15th July. 1847. 7 S. D. A. Rep. 354. —Court at large. *Nehal Chundur Banerjee and others* v. *Birmanund Ghose and another.* 29th July 1848. S. D. A. Decis. Beng. 727.—Tucker, Barlow, & Hawkins. *Goluck Chundur Chowdhree* v. *Courjon and another.* 16th Aug. 1848. S. D. A. Decis. Beng. 769.—Dick, Jackson, and Hawkins.

93. When a man's property is attached under a summary decision of the Collector for an alleged balance of rent due from him, he may sue in the Civil Court to reverse the summary decision, and he may also sue either in that action, or separately, for recovery of the property attached, and for damages sustained by him in consequence of the attachment. *Eshur Chunder Muzoomdar* v. *Eshur Chunder Moonshee and others.* 19th May 1846. S. D. A. Decis. Beng. 193.—Tucker.

94. A man cannot, however, in one and the same suit, obtain the cancel of a summary decree passed under one Regulation (Reg. VII. of 1799), and also obtain damages for an unjust attachment of his property under another Regulation. (Reg. V. of 1812.) *Adur Munnee Bewah* v. *Juggunath Chatterjee and others.* 26th Feb. 1848. S. D. A. Decis. Beng. 114.—Tucker, Barlow, & Hawkins.

95. The rents of a series of years may be sued for together or separately, at the option of the plaintiff. *Syed Keramut Ali* v. *Gudadhur Ghose.* 30th June 1846. S. D. A. Decis. Beng. 252.—Tucker.

96. The Circular Order No. 29 of the 11th Jan. 1839 does not apply to suits for arrears of rent, the rent for each year forming a distinct ground for action. *Syed Keramut Ali* v. *Gudadhur Ghose.* 30th June 1846. S. D. A. Decis. Beng. 252.—Tucker.

97. Actions founded on separate transactions, being different in time, place, and amount, though the settlement of accounts on which they are founded may have taken place on the same day, ought not to be included in one suit. *Guneish Sookul* v. *Debee Singh.* 15th Sept. 1846. 1 Decis. N. W. P. 170.—Thompson, Cartwright, & Begbie.

98. Separate actions for rent may be brought against renters under one and the same agreement, where the specific liability of each renter is declared at the foot of the agreement; but if there be no such specification, it is necessary to bring a single action. *Hydur Alee Khan* v. *Rumzan Bhuteara.* 18th Nov. 1846. 1 Decis. N. W. P. 193.—Begbie.

99. A claim having been divided contrary to paragraph 1 of the Circular Order of the 11th Jan. 1839, the judgments of the Lower Courts were reversed in consequence. 30th July 1847. *Radha Benode Misr* v. *Sheikh Musheentoollah and others.* 7 S. D. A. Rep. 350.—Tucker, Barlow, & Hawkins.

100. A suit for breach of a farming engagement, signed by *Ryots* jointly and severally, may be brought against all. *Ifshur Chundur Raee* v. *Himla Bibi and others.* 11th Aug. 1847. S. D. A. Decis. Beng. 418.—Barlow.

101. Where two individuals, each holding under separate farming engagements distinct portions of land in the same village, claimed arrears of rent in one suit, they were nonsuited separately. *Chedee Singh* v. *Honooman Singh and another.* 12th Aug. 1847. 7 S. D. A. Rep. 381. —Rattray, Barlow, & Jackson.

102. Where a plaintiff brought separate suits, resting on the same cause of action, previously to the issue of the Circular Order of the 11th Jan. 1839; it was held, that he might be heard, the practice of the Courts allowing the exercise of a discretion as to the retrospective application of that rescript.[1] *Sheo-*

[1] And see the cases under the title of CIRCULAR ORDER, pl. 4 *et seq.*

bukhsh Rae and others v. *Sheoumber Singh.* 6th Sept. 1847. 2 Decis. N. W. P. 309.—Tayler, Begbie, & Lushington.

103. Where the plaintiffs came into Court with two claims, one for possession, the other for balance of rents of past years; it was held, under the circumstances of the case, that such could not be admitted in the same action. *Broderick* v. *Hurmohun Raee.* 11th Sept. 1847. S. D. A. Decis. Beng. 536.—Tucker, Barlow, & Hawkins.

104. Where the plaintiff sued on a mortgage deed for the recovery of certain lands, and also on an *Ikrárnámeh* for a sum of money and interest; it was held, that the two transactions should have been made the subject of separate suits, they being distinct engagements; and that the decision in the suit, having been passed solely on the *Ikrárnámeh,* did not bar any claim which the plaintiff might have against the defendant, independently of that deed. *Rind* v. *Biddhee.* 15th Sept. 1847. 2 Decis N. W. P. 327.—Tayler, Begbie, & Lushington.

105. In a case of debt on bond, the parties acquiring a right thereto by inheritance, entered separate actions to recover the *quota* each was entitled to. Held, that this was not a splitting of the cause of action. *Mohunt Mudoossoodun Das* v. *Goverdhun Das.* 18th Sept. 1847. 7 S. D. A. Rep. 392.—Tucker, Barlow, & Hawkins.

106. Where the plaintiff brought his suit for the recovery of a sum of money due from the defendant under a summary decree for a balance of rent for a certain year, and also for the balance of rent for the following year, alleging as his reason for including the summary decree in the suit that the defendant had solicited him to refrain from execution of the decree, promising to pay the two years' rent together; it was held, that this was not sufficient to justify a nonsuit.[1] *Lalla Hursohai and another* v. *Lalloo.* 25th Sept. 1847. 2 Decis. N. W. P. 351.—Tayler. *Ramsahaee and another* v. *Bhowaneedeen.* 15th Nov. 1847. 2 Decis. N. W. P. 373.—Lushington.[2]

107. Where a plaintiff sued in one case for her share of certain property, and in another for mesne profits due to her mother, both suits being founded on right of inheritance; it was held, that this was not a splitting of claims, as she could not conjoin her claim to the mesne profits with her claim for the other property of her mother; because a suit for them was then pending in Court, instituted previous to the issue of the Circular Order of the 11th Jan. 1839. *Usdun-o-Nissa Bibi* v. *Fukhurooddeen Mohummud and another.* 5th Jan. 1848. S. D. A. Decis. Beng. 3.—Dick, Jackson, & Hawkins.

108. Where a *single* suit was brought to cancel a summary decree *and* for damages for unjust attachment, the plaintiff was nonsuited. *Adur Munnee Bewah* v. *Juggunnath Chatterjee and others.* 26th Feb. 1848. S. D. A. Decis. Beng. 114.—Tucker, Barlow, & Hawkins.

109. Where an estate is held by several sharers in separate possession under a deed of private partition, each sharer may bring an action

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[1] The Judge might have dismissed the claim under the summary decree, and have proceeded to determine the claim for the balance of the following year.

[2] In this case the Court remarked—"The Court have frequently recognized the necessity of establishing and maintaining uniformity of procedure, and they continue to guard with vigilance against irregularity and innovation. At the same time, they are of opinion that too great severity of practice is ill suited to the present condition of this country; and they hold, that if the claim of a plaintiff is clearly stated, if he has committed no error which by law involves a nonsuit, and if there is no ground to expect difficulty in the execution of the decree, it is not *incumbent* on the Judge to record a nonsuit, although there may exist some trifling objection to the form in which the suit has been laid."

for rent against the tenant of the share assigned to himself, even though the estate may still continue joint and undivided so far as regards its responsibility to Government for the revenue. *Ramnurain Dut and another* v. *Suroop Chunder Bose and others.* 8th April 1848. 7 S. D. A. Rep. 483.—Tucker, Barlow, & Hawkins.

110. Where a party brought a suit for the rent of a garden for the *Faslí* year 1247, having previously instituted a suit for the rent of the same garden for the year 1246; it was held, that he was at liberty to bring a separate suit for any one year's rent that might be due to him intermediately between the *Faslí* year 1246 and the institution of the suit, and that his bringing such separate suits did not amount to a splitting of the cause of action. *Hoolasee Ram* v. *Ameeroonnissa and another.* 1st May 1848. 2 Decis. N. W. P. 140.—Tayler, Thompson, & Cartwright.

111. *A* mortgaged land to *B*, who sub-mortgaged it to *C* the plaintiff; *A*'s widow obstructed *C*'s possession, and *C* consequently sued her and *B* for the same. Held, that it was not necessary that the transaction between *A* and *B* should be established before *C* could bring his action, and that *C*'s suit could not be considered as including two separate causes of action. *Kishen Pershaud and another* v. *Dhurrum Dass and others.* 13th June 1848. 3 Decis. N. W. P. 198.—Thompson.

112. Where the plaintiff brought an action to obtain possession of a share in an estate by the cancelment of an auction sale, and also for the amendment of a *Fard Patidárí* filed in the settlement record; it was held, that the claim for the amendment of the settlement record did not constitute a separate cause of action, so as to render the plaintiff liable to a nonsuit. *Sumbul Singh* v. *Juddoobeer Singh and others.* 19th June 1848. 3 Decis. N. W. P. 207.—Tayler, Thompson, & Cartwright.

113. Where lands are held under one and the same title, and the holder is turned out of all the lands by one person, at different times, he may sue the ejector for the whole of the lands in one action. *Doorga Das Buttacharjah and others* v. *Mt. Seetul Munnee Dibbea.* 19th July 1848. S. D. A. Decis. Beng. 696.—Hawkins.

114. But *A* cannot sue *B* by the same plaint, for the possession of one estate, because it was adjudged to him or his ancestor by a decree against *B*, and for possession of another estate, because *B* had wrongfully dispossessed him. *Baboo Chintamun Singh and others* v. *Rajah Bejye Govind Singh and others.* 6th May 1848. S. D. A. Decis. Beng. 421.—Rattray.

115. A *Pergunnah* was held in four shares, each share by its own *Zamíndár*, as a separate estate. The plaintiff and his ancestors held a moiety of 13 *Talooks*, extending through different parts of the *Pergunnah*, in one *Mukarrarí* tenure as an entire estate, and had paid the rents to the *Zamíndárs* (shareholders) according to their respective shares. The *Zamíndárs* ousted him. Held, that the tenure being one and entire, the plaintiff was justified in bringing a suit against all the shareholders together. *Goluck Chundur Chowdhree* v. *Courjon and another.* 16th Aug. 1848. S. D. A. Decis. Beng. 769.—Dick, Jackson, & Hawkins.

116. A party may sue in one action to establish his right to assess lands held by the defendant, and for which he had not previously paid rent, and also to recover from him rent for other lands at a higher rate than he had previously paid. *Dwarkinath Singh* v. *Parbuttee Churn Sirkar and others.* 12th Sept. 1848. S. D. A. Decis. Beng. 812.—Hawkins.

117. The plaintiffs brought their suit against thirty-five defendants for

the recovery of *Sayir* which they had illegally carried off: it was proved that the defendants had acted together and taken it jointly. Held, that the plaintiffs acted rightly in suing the defendants altogether, and that Construction No. 860 did not apply to the case.[1] *Ramkhilawun Rai* v. *Toolsee Rai and others.* 21st May 1849. 4 Decis. N. W. P. 129.—Thompson, Begbie, & Lushington.

118. Where *A* acted as *Mukhtár* under an *Ikrárnámeh* for *B* and *C*, and after a time *B* put an end to the agreement, but *A* continued to act as *C*'s agent under the terms of the *Ikrárnámeh*: and *A* sued *C* for arrears of salary due subsequent to his discharge by *B*, having previously sued *B* and *C* on the *Ikrárnámeh* and obtained a decree; it was held, that such separate suit against *C* was properly brought, and that it could not have been included in the former suit. *Imlach* v. *Rajah Raj Indur Nurain Raee.* 19th June 1849. S. D. A. Decis. Beng. 211.—Dick.

119. Where the plaintiff sued for a portion of her claim, stating in her plaint that she would afterwards sue for the remainder, and the cause of action was dispossession at the *Nazránah* settlement; it was held, that such dispossession was an isolated and independent act, altogether distinct from the mode of acquisition of the two portions of the estate by the plaintiff, and left no excuse for instituting separate suits. The plaintiff was accordingly nonsuited under the provisions of the Circular Order of the 30th Sept. 1847.[2] *Ali Buksh* v. *Mt. Oomda Begum.* 11th June 1850. 5 Decis. N. W. P. 118.—Begbie, Deane, & Brown.

120. A suit brought to confirm one sale, and to set aside another, of a share in certain landed property, is not identical with a suit for *possession* of such share, so as to render necessary a specification of the lands composing that share. *Kaleechurn* v. *Baneedial Singh and others.* 18th June 1850. 5 Decis. N. W. P. 124.—Deane & Brown.

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6. *Valuation of Suit.*

121. A party is not liable to be nonsuited in an action, from the difference between the value stated and the proper value of the property sued for affecting the stamp duty on the petition of plaint, unless the value be understated in the proportion of 10 per cent. *Shama Soondree Dasee, Petitioner.* 9th Dec. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 73.—Reid.

122. It is no ground of nonsuit that the value of the property sued for has been over-estimated. *Gunga Saugur Sircar, Petitioner.* 16th Dec. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 74.—Reid.

123. Held, that it is unnecessary to lay an action for recovering possession of a *Mílá*, or fair, at 18 years' produce, and that it was properly instituted at the estimated value of the interest claimed. *Sheebnath Dutt and others* v. *Heeralal Birjbasee and others.* 21st Jan. 1846. 7 S. D. A. Rep. 225.—Reid, Dick, & Jackson.

124. Held, that the Court in which a suit for a portion of property,

[1] The Court observed in this case—"The principle of Construction 860 is, that several parties shall not be jointly sued, unless there be something in common amongst them in consideration of which they are held to be jointly responsible. If it had been found, in the case before the Court, that each defendant had separately appropriated a particular item of *Sayir*, then it would have been held to be incumbent on the plaintiff to sue each defendant in a separate suit."

[2] The Court remarked in this case, that—"Had the plaintiff been dispossessed at *different times* of the two portions, there would have been some show of reason for her mode of proceeding." The *Vakil* of the plaintiff (Respondent in Special Appeal), on finding that the judgment of the Court was against his client, offered to relinquish the unadjudicated portion of the claim, provided the decree of the Zillah Court in her favour were left intact; but the Court refused to grant his request, as the defendant withheld his consent to the proposition.

claimed under a disputed title, should be instituted, is to be determined with reference to the value of the title, and not to the value of the portion sued for.[1] *Aseemooddeen* v. *Moonshee Munneeroodden Mahomed and another.* 28th Feb. 1846. 7 S. D. A. Rep. 255.—Tucker, Reid, & Barlow.

125. *A* had instituted a suit against *B* and others to compel them to keep up accountants in a certain *Hát*, whose names should be recorded, and to recover mesne profits and interest, laying his suit at Rs. 14,000. *A* was nonsuited by the Lower Court, because he had not estimated the value of the right of having accountants appointed. Held, by the Sudder Dewanny Adawlut, that the plaintiff was entitled to bring his action at the amount in which he considered himself endamaged, and that the value of the right in question being included in it, there were no grounds for a nonsuit. *Ram Ruttun Rai, Petitioner.* 16th March 1846. 1 S. D. A. Sum. Cases. Pt. ii. 77.—Reid.

126. Where a party suing for property had valued it at the amount of mortgage money advanced on one of the estates instead of its *Jama*, as is ruled by the Regulations; it was held, that such error did not subject the party to a nonsuit, as it was an error on the right side; and that by overvaluing the property no loss could accrue to the state. *Tyub Begum and another* v. *Sahibeh Begum.* 26th May 1846. 1 Decis. N. W. P. 17. — Thompson, Cartwright, & Begbie.

127. A plea of erroneous valuation should be investigated and determined previous to entering on the merits of a case. *Prannath Chowdry* v. *Gour Mohun Nag Chowdry and others.* 12th Aug. 1846. S.D.A. Decis. Beng. 304.—Reid, Dick, & Jackson. *Ajoodheapershad and others* v. *Nuwaub Asgar Ali Khan.* 9th March 1848. 3 Decis. N.W.P. 78.—Cartwright.

128. Objections made in the Lower Court, by the defendant, to the valuation of the property sued for, cannot be tried by the Appellate Court, unless a summary or regular appeal be preferred on that particular point.[2] *Bechoo Opadhia and another* v. *Shah Mohummudee and others.* 2d Nov. 1846. 7 S. D. A. Rep. 286. —Rattray, Tucker, & Barlow.

129. An objection by the defendant to the valuation of the property sued for cannot be entertained by the Court of original jurisdiction, unless pleaded in answer to the plaint; or by the Appellate Court, unless so pleaded, and the order thereon, if against the defendant, appealed from, either summarily or regularly.[3] *Syud Shah Mohummud Yasin* v. *Syud Enyet Hussein and others.* 17th Dec. 1846. 7 S. D. A. Rep. 284.—Rattray, Tucker, & Barlow. *Sheikh Chunnoo* v. *Kashee and others.* 20th Aug. 1849. 4 Decis. N. W. P. 286.—Thompson, Begbie, and Lushington.

130. The Courts are required to take cognizance of errors of valuation, although the defendant may not have objected, so far as they can do so without exercising their judgment as to the accuracy of an estimate.[4] *Sheikh Chunnoo* v. *Ka-*

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[1] The principle which regulated the judgment of the Court in regard to the jurisdiction of the Court of first instance had been previously recognized by the Circular Order No. 16, Vol. II. dated 31st of August 1832.

[2] See Circular Order dated 20th August 1841, No. 161.

[3] See the Circular Order cited in the preceding note. And see also the case of *Sheikh Akbur Alee* v. *Surrubjeet Singh.* 6 S. D. A. Rep. 68. It must be observed that this and the preceding *placitum* are applicable only to the cases described in Cl. 4. of the Note to Art. 8. of Sched. B. of Reg. X. of 1829.

[4] This decision, it will be observed, only applies to cases not of the nature of those described in Cl. 4. of the note to Art. 8. of Sched. B. of Reg. X. of 1829. In the class of cases to which the other clauses refer, the Courts have always interfered of their

shee and others. 20th Aug. 1849. 4 Decis. N. W. P. 286.—Thompson, Begbie, & Lushington.

131. Where a plea of undervaluation of the property sued for is urged by the defendants, such plea must be determined prior to decision on the merits of the case. *Hur Suhai and another* v. *Mt. Oodya.* 4th Nov. 1846. 1 Decis. N. W. P. 183.—Cartwright.

132. A plea of undervaluation of a suit must be determined before the Lower Court can inquire into the merits of a case. *Kirke* v. *Toola Ram.* 11th Jan. 1847. 2 Decis. N. W. P. 7—Tayler, Thompson, & Cartwright. *Hurree Doss and another* v. *Hudson.* 8th June 1847. 2 Decis. N. W. P. 165.—Lushington. *Nidhee* v. *Doolee Chund.* 9th Feb. 1847. 2 Decis. N. W. P. 36. —Cartwright.

133. An amendment of a defect in the valuation of a suit, after the completion of the pleadings, is illegal. *Budloo Sahoo* v. *Gopaul and others.* 7th April 1847. 2 Decis. N. W. P. 91.—Tayler.

134 Where the plaintiffs sued to recover possession of certain ground, and to level the terrace of a *Kotrí* constructed by the defendant; it was held by the Principal Sudder Ameen, that it was not necessary to include the value of the materials of the terrace in the valuation of the suit.[1] *Soojan Singh and another* v. *Birjlal and others.* 10th April 1847. 2 Decis. N. W. P. 97.

135. The estimate, in money, of a suit simply for re-admission to *Cast,* is not an action to recover the amount at which it is laid; and an order of nonsuit failing to draw the distinction between them was overruled by the Sudder Dewanny Adawlut. *Sonaram Gazor* v. *Obhyram and others.* 13th April 1847. 7 S. D. A. Rep. 288.—Barlow.

136. If a plaintiff has valued his suit upon an erroneous principle (as, for instance, at the auction selling price, where three times the *Sudder Jama* was the proper measure), he is not allowed to file a supplemental plaint in which he values his suit correctly at the higher amount. *Gour Kishore Dutt and others* v. *Kishen Kinkur Sirkar.* 27th May 1847. 7 S. D. A. Rep. 309.—Hawkins.

137. Held, that the language of the Circular Order of the 31st Aug. 1832 is not so imperative as to require that the principle recognized should be forcibly applied to every case in which there might be found some analogy with those cases to which the Circular more particularly refers. *Rao Roshun Singh* v. *Dhun Singh and others.* 9th June 1847, 2 Decis. N. W. P. 169.—Lushington.

138. A claim by a *Katkinádár* being only for an interest in land during a limited period, ought to be laid at an estimated value of the injury the claimant has sustained from dispossession, and not at the amount of one year's assessment.[2] *Bahadoor Singh* v. *Gungaram.* 26th July 1847. 2 Decis. N. W.

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own motion: no *estimate* is there required, and there is therefore no room for objection to the amount of *estimate* on the part of the defendant. If the principle be wrong, the amount is wrong; no fact remains to be ascertained, as in the class of cases described in Cl. 4. of the Note to Art. 8. Sched. B. of Reg. X. of 1829; but the Court can pass the final order as soon as the error is discovered, although the error has not been pleaded by the opposite party. See Cl. 1. of Sec. 7. of Reg. XXVI. of 1814. Construction No. 1046, and the 1st and 2d paragraphs of the Circular Order of the 3d Sept. 1841.

[1] The Principal Sudder Ameen nonsuited the plaintiff on other grounds, which were declared erroneous by the Sudder Dewanny Adawlut; and his decision was reversed, and the case remanded, to be tried on its merits, the Court not noticing the above point of valuation.

[2] See Reg. X. 1829, Sched. B. Art. 8. Construction No. 702, 27th July 1832. Construction No. 1101, 25th Aug. 1837. The decision in the above case was recorded after consultation with the Presidency Court.

P. 217.—Tayler, Begbie, and Lushington.

139. Suits to recover or obtain possession of mortgaged lands are analogous to suits for the possession of *Kathinás*, and are consequently subject to the same rule of valuation, *i. e.* the value of the thing sued for, and not one year's *Jama. Sheikh Chunnoo* v. *Kashee and others.* 20th Aug. 1849. 4 Decis. N. W. P. 286.—Thompson, Begbie, & Lushington.

140. And if such suits be erroneously valued at one year's *Jama*, and no objection has been made by the defendants in the Court of first instance, the lower Appellate Court cannot nonsuit the plaintiff, since such order of nonsuit is proper only when the defendant has *adduced proof* that the valuation has been understated in the proportion of 10 per cent.[1]—*Ibid.*

141.—The plaintiff sued her husband to recover Rs. 488.4 on account of alimony, being arrears for a certain period at the rate of Rs. 15 *per mensem.* She likewise petitioned for the future payment of the said stipend. The Lower Courts decreed in favour of the plaintiff for the amount claimed by her, and ordered that she should receive Rs. 15 *per mensem, should nothing occur to prevent it.* A special appeal was admitted, to determine whether the suit was not incorrectly valued. Held, that the suit was correctly valued according to Sect. 3. of Reg. III. of 1803, as the plaintiff had stated, "according to the nearest estimate, the exact sum of money, or the amount in which she was endamaged."[2] *Neeladhar* v. *Mt. Doorga.* 27th Aug. 1847. 2 Decis. N. W. P. 300.—Tayler, Begbie, and Lushington.

142. The plaintiffs sued to establish an hereditary right for themselves and their heirs for ever, to a certain *Zíhakk* allowance of Rs. 58.6.3 *per mensem*, and likewise to recover an accumulated balance of the said allowance, amounting to Rs. 595.9.4, making a sum total of Rs. 653.15.7, their petition of plaint being written on stamp paper sufficient to cover the latter sum. Held, that the absence of any *fixed* rule to regulate the fair value of such a claim can form no good reason for infringing the law, which clearly indicates that a suit shall be brought according to the value of the interest, matter, or thing sued for, and that the plaintiffs could not be allowed to sue and obtain a decree for a *Zíhakk* allowance in perpetuity on a stamp only sufficient to cover a claim for one month's income, with a small balance said to be due, the value of the claim, to them, far exceeding the sum at which they had laid their action. *Mt. Ghalib Jahan Begum and another* v. *Nuwab Mohumed Hoossein Khan and others.* 26th Feb. 1849.

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[1] See Cl. 4. of the Note to Art. 8. Sched. B. Reg. X. of 1829. The objection to the valuation, and the proof required to be adduced by the objector, is, however, only necessary in the class of cases described in that clause. The cases to which the other clauses refer can be interfered with by the Court whenever the error in valuation may be discovered, although the error has not been pleaded by the opposite party. See Cl. 1. of Sec. 7. of Reg. XXVI. of 1814, Construction No. 1046, and the 1st & 2d paragraphs of the Circular Order of the 3d Sept. 1841.

[2] In this case the special appellant objecting to the valuation of the plaintiff's suit, did not specify any other amount of valuation, as he is bound to do under the Note to Art. 8. of Sched. B. of Reg. X. of 1829. The Court observed that—"although the respondent sues for the future payment of her stipend, as well as for the arrears, the decrees of the Lower Courts cannot be understood unconditionally to *give* her what may become due to her subsequently to the decree, nor will she be able to enforce payment thereof by execution of this decree. By awarding her the arrears of her stipend, the justice of her claim is, of course, recognized; but should its payment be withheld, her only remedy will be a fresh suit for such arrears; and the appellant would, under the terms of the decree, be entitled to shew cause for non-payment of the same."

4 Decis. N. W. P. 30.—Thompson & Cartwright (Tayler dissent.).[1]

143. A plaintiff undervaluing property, according to his own *data*, must be nonsuited, agreeably to paragraph 4 of the note to Article 8 of Schedule B. of Reg. X. of 1829. *Kearns, Petitioner*. 2d Oct. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 120. —Tucker, Barlow, & Hawkins.

144. Construction No. 1101 evidently contemplates the case of a farmer suing to maintain possession of his farm, not that of proprietors, or persons standing in the place of proprietors, *to oust* a farmer. *Soorjoo Ram* v. *Gunesh Pershad and others*. 4th Jan. 1848. 3 Decis. N. W. P. 1.—Tayler, Cartwright, & Begbie.

145. Such proprietors, or persons standing in the place of proprietors, so suing, should therefore lay their suit at the *Jama.—Ibid.*

146. Objections to the valuation of a suit must be urged in definite and specific terms, and corroborated by evidence, or they need not be specifically alluded to by the Courts in giving judgment. *Amanut Ali and others* v. *Syud Mahomud Tuckee and another*. 24th Jan. 1848. 3 Decis. N. W. P. 32.—Tayler, Thompson, and Cartwright.

147. In a suit by *Maafidárs* for possession of certain *Maafi* lands, by ousting the farmers whose term had expired, and who refused to give up possession; it was held, that the suit was properly valued at eighteen times the rent-roll, agreeably to the provisions of Shedule B. heading 8. note 2 of Reg. X. of 1829. *Syud Mahomud Tuckee and another* v. *Surufraz Ali and others*. 24th Jan. 1848. 3 Decis. N. W. P. 30.—Tayler, Thompson, & Cartwright.

148. A claim being considered undervalued, the plaintiff should be nonsuited without going into the merits of the case. *Bhugeeruth Das* v. *Bishenpreea Bewa and others*. 8th March 1848. 7 S. D. A. Rep. 444.—Tucker.

149. By Construction No. 1272, suits instituted with a view to fix the *Jama* of *Ryots'* holdings should be laid at one year's rent; but there is no prohibition to a person including in the same suit the amount of arrears due, to which he would be entitled from the date of the notice under Reg. V. of 1812, provided he establish his right to enhance the *Ryot's Jama*. *Ramchurn Gohoo* v. *Sulamut Khan and others*. 17th June 1848. S. D. A. Decis. Beng. 538. —Tucker, Barlow, & Hawkins.

150. Quære, Whether, under Sec. 3. of Reg. IV. of 1793, and Reg. X. of 1829, Schedule B. Art. 8. a garden consisting of *Lákhiráj* land, yielding no rent to its owner, but held directly by him, should be valued for the purposes of the suit at the estimated selling price. *Ranee Preea Dassee and another* v. *Chundurnath Dutt and others*. 29th June 1848. S. D. A. Decis. Beng. 613. —Tucker, Barlow, & Hawkins.

151. An excess in the valuation of a suit was allowed to be amended in appeal with the consent of the respondent's (defendant's) pleader. *Luchmun Rai and others* v. *Byjenath Rai and others*. 11th Sept. 1848. 3 Decis. N. W. P. 334.—Tayler.

152. The amount in action being increased by a supplement, filed, however, *before completion* of the pleadings, does not vitiate the proceedings. *Bhyrob Chundur Mujmoadar and others* v. *Dooleh Dibah*. 8th Jan. 1849. S. D. A. Decis. Beng. 4.—Barlow.

153. It is no ground for a nonsuit that the property has been over-estimated, unless the effect be to remove the suit from the cognizance of the Court, by which, according to the general law of the country, it ought

[1] Mr. Tayler thought that this suit ought to have been dealt with precisely in the same manner as the case of *Neeladhar* v. *Mt. Doorga*, and for the same reasons, viz. those quoted from the Court's observations in the decision of that case in the preceding note.

to be determined.[1] *Kishen Jeebun Bukshee* v. *Dunlop and Co.* 4th Dec. 1849. S. D. A. Decis. Beng. 431 h.—Barlow, Colvin, & Dunbar.

154. An objection to a suit, on the ground of valuation, not raised in the answer to the plaint, cannot, on the principle of Cl. 1. of Sect. 4. of Reg. XIII. of 1808, be entertained subsequently.[2] *Ramchurn Mitter and others* v. *Sreenath Raee and others.* 16th May 1850. S. D. A. Decis. Beng. 207. Dick, Jackson, & Colvin.

155. The Circular Order of Aug. 20th, 1841, and Construction No. 1046, must be understood so as to be consistent with the express terms of the law laid down in Cl. 8. of Schedule B. of Reg. X. of 1829. *Carew and another* v. *Fre Jose Augustinho Gomes and another.* 20th May 1850. S. D. A. Decis. Beng. 238.—Barlow, Colvin, & Dunbar.

156. A party having purchased, as by one transaction, property consisting of broken portions of a number of villages held under a common *Jama,* it is obviously impossible for him to set forth the amount he pays for each separate portion, unless on an estimate wholly fanciful and capricious. And it was held under such circumstances, that as the deed of sale contained no specification of the amount for which each share was sold, the valuation of a suit for possession was properly made at the sum which the buyer agreed to give and the sellers to take. *Sheikh Doab Ali* v. *Seetuldeen Singh and others.* 23d July 1850. 5 Decis. N. W. P. 187.—Begbie, Deane, & Brown.

7. *Transfer of Suits.*

157. Two out of five appeals in suits instituted on exactly the same grounds were transferred to the file of the additional Principal Sudder Ameen, whilst the three others were made over to the Principal Sudder Ameen: the decisions of the two officers were directly opposed to each other, and their judgments were annulled on special appeal, and the cases remanded to be tried by one and the same officer, with a recommendation that the Judge should retain them on his own file. *Hurdass Tewaree* v. *Luchmee Narain Singh.* 12th Sept. 1849. 4 Decis. N. W. P. 313.—Thompson.

158. The Sudder Courts are competent, under Sec. 3. of Act III. of 1837, to transfer prospectively, not to sanction retrospectively, the cognizance of an original suit, or appeal, in one Zillah Court, subordinate to them, in lieu of another. *Gobindmunnee Chowdhrain* v. *Parbuttee Chowdhrain.* 12th March 1850. S. D. A. Decis. Beng. 41.—Barlow, Colvin, & Dunbar.

8. *Dismissal.*[3]

159. The Sudder Dewanny Adawlut will dismiss an action if the plaintiff be unable to make out a case to support his pleadings for defect of evidence in order to establish his claim. *Gaurchandrapal and others* v. *Khwaja Aleemullah.* 12th Aug. 1842. 2 Sev. Cases, 11.—Lee Warner & Reid.

160. It is illegal to dismiss a claim without inquiring into its merits, on the ground that a previous suit by the same plaintiff has been dismissed on default. A special appeal was accordingly admitted by the Sudder Dewanny Adawlut, and the case returned to the Acting Judge.[4] *Mt. Mohunnee Dassee* v. *Brijmohun Dutt.* 4th March 1845. S. D. A. Decis. Beng. 44.—Tucker.

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[1] And see the case of *Domun Singh* v. *Ushoor Khan Chowdhree,* Vol. I. of this work, p. 532. Tit. Practice, pl. 296, and the note appended thereto.

[2] This is to be understood as referring to the ordinary rule, but is subject of course to any special provisions in the law.

[3] And see Tit. Practice, 217 *et seq.*

[4] See Constructions, No. 870, dated 21st Feb. 1834, and No. 266, dated 19th Feb. 1817.

161. A suit to set aside a sale made by the plaintiff, on the ground that it was merely a nominal and fictitious sale, with a view to evade the process of the Court, was dismissed on the principle that no party can take advantage of his own wrong. *Roushun Khatoon Chowdrain* v. *Collector of Mymensingh and others.* 24th March 1846. 7 S. D. A. Rep. 257.—Dick.

162. A suit is not to be dismissed on the ground of the rejection of a document in another suit to which the plaintiff was not a party. *Nurainee Dossee* v. *Birj Kishwur Deb and others.* 20th June 1846. S. D. A. Decis. Beng. 231.—Reid.

163. A claim by inheritance was dismissed under the Circular Order No. 29 of the 11th Jan. 1839, being for property which should have been included in a previous suit.[1] *Raee Hurree Kishen* v. *Rajah Putnee Mul.* 18th Jan. 1847. 7 S. D. A. Rep. 287.—Rattray, Dick, & Jackson.

164. Where a party sued another for lands which he asserted to be rent-free, and it appeared that another suit for the same lands was pending before the Collector, the suit was dismissed forthwith. *Maha Ranee Konwul Koonwaree* v. *Sree Dhur Sein and others.* 16th June 1847. 7 S. D. A. Rep. 345; S. D. A. Decis. Beng. 261.—Dick, Jackson, & Hawkins.

165. An Act of Government requiring a suit to be dismissed with costs, under certain circumstances, was held to be binding on the Courts whether pleaded or not.[2] *Gujput Raee* v. *Degumbur Suhaee.* 17th June 1848. S. D. A. Decis. Beng. 537.—Tucker, Barlow, & Hawkins. *Jewun Nurain Singh* v. *Rambullubh.* 16th Dec. 1848. S. D. A. Decis. Beng. 874.—Barlow, Jackson, & Hawkins.

166. At the institution of a suit the Deputy Collector had decreed for the resumption of the lands sued for; but the case was yet pending in appeal before the Special Commissioner, and was decided two months after the institution of the suit. The plaintiff had appeared in the Court of the Special Commissioner, and had there claimed the lands as his property, but was finally unsuccessful. Held, that under these circumstances dismissal, and not nonsuit, would be the proper order. *Tirpoora Soondree and others* v. *Jyechundur Pal Chowdhree.* 28th June 1848. S. D. A. Decis. Beng. 597.—Jackson & Hawkins (Dick dissent).

167. The proper order in regard to a plaint deficient in precision under Sect. 3. of Reg. IV. of 1793, or in other points required by the Regulations, is one not of entire rejection, but of nonsuit only. *Kazee Usnud Ali and others* v. *Mt. Bechun.* 3d May 1849. S. D. A. Decis. Beng. 135.—Dick, Barlow, & Colvin.

168. A claim which of itself merits dismissal is not exempted from dismissal by the additional fault of misjoinder of claims. *Baboo Chintamun Singh and others* v. *Raja Bejye Govind Singh and others.* 23d May 1849. S. D. A. Decis. Beng. 161.—Dick, Barlow, & Colvin.

169. A suit cannot properly be dismissed without trial on its merits; although it may be, amongst others, a valid ground of dismissal that the subject of it ought to have been

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[1] This case disposes of the question raised in the case of *Bholanath Baboo, Petitioner.* 1 S. D. A. Sum. Cases, Pt. ii. 33. It is to be observed, that no suit could be had upon the plaint in this case. But with reference to the sense in which the terms *nonsuit* and *dismissal* are taken by the Mofussil Courts, the former to imply that the action may be again instituted in an amended form, the latter that it cannot, the order in this case must be considered to be one of dismissal rather than of nonsuit.

[2] The Act was Sec. 22. of Act XII. of 1841.

brought forward by petition for review of judgment. *Doorga Das Fotedar* v. *Roodur Purshad Mookerjee and others.* 2d Aug. 1849. S. D. A. Decis. Beng. 320.—Dick, Barlow, & Colvin.

170. The plaintiff's claim to the land in dispute was founded on the plea that the same had been bestowed upon his ancestors as a gift; and although he entirely failed to prove this averment, the Judge gave judgment in his favour, because it was proved and admitted that he was manager of the land. Held, reversing the Judge's decree, that the variance between the statement made in the plaint as the ground of action, and the fact proved and admitted on the trial, was fatal to the plaintiff's cause. *Teroomalay* v. *Soondra Rajien and another.* 27th Sept. 1849. S. D. A. Decis. Mad. 66. —Hooper & Thompson.

171. Where the plaintiff averred in his plaint that the defendant was his *Mukhtár* at the time he contracted the loan, for the re-payment of which the plaintiff sued, and in his replication had endeavoured to make it appear (in consequence of the defendant having denied the fact that he was the plaintiff's *Mukhtár*) that he had not asserted that the defendant was at the date of the loan his *Mukhtár*, but meant merely to state that the defendant had *formerly* been employed by him in the capacity of *Mukhtár*; it was held, that such an incongruity of statement was not a sufficient ground for the dismissal of the plaintiff's suit. *Buchoo Lall Pande* v. *Gopal Dass.* 9th Sept. 1850. 5 Decis. N. W. P. 296.—Begbie, Deane, & Brown.

9. *Fictitious Suit.*

172. A defendant (appellant) in a case which had been decided against him *ex parte* in the Lower Court, urged that no such person as the plaintiff (respondent) existed. The respondent's *Vakíls* were questioned as to the existence of their client; the most unsatisfactory answers were given: the *Vakálat Námeh* had been sent from Allygurh by one *A* in virtue of a general power of attorney, said to have been executed in his favour by the respondent; and no one could say who or what the respondent was. Held, that such a suit could not be heard with reference to the spirit of Sect. 2. of Reg. III. of 1803; and the Court maintained as a principle, in conformity with the spirit of the Circular Order No. 20, dated the 29th July 1809, that a fictitious plaintiff makes a fictitious suit. The claim of the plaintiff was accordingly dismissed. *Derridon* v. *Shahabooddeen.* 24th Dec. 1849. 4 Decis. N. W. P. 339.—Begbie, Lushington, & Robinson.

ADAVI PALKI.—See Action, 3.

ADMINISTERING POISONOUS DRUGS.—See Criminal Law, 1. 179.

ADMINISTRATION.—See Executor, *passim.* Jurisdiction, 6, 7.

ADMINISTRATOR.—See Executor, *passim.*

ADMIRALTY JURISDICTION. —See Jurisdiction, 12, 13.

ADMISSIONS.—See Evidence, 16 *et seq.*

ADOPTION.[1]

I. The qualification and right to adopt, 1.

[1] On reference to the Title Adoption in Vol. I. of this work, the reader will find pointed out in the notes such passages of the Hindú law books, native and European, as relate to the law of Adoption.

II. The qualification and right to be adopted, 5.
III. Form of Adoption, 7.
IV. Evidence of Adoption, 10.
V. Liability of adopted sons.—See Debtor, 2.

I. The qualification and right to adopt.

1. *A*, a *Zamíndár* in the Northern Circars, a Hindú of the *Sudra* Cast, being childless, adopted, with the consent of his wife, a son, *B*. At the time of this adoption he executed a deed with the natural father of *B*, by which he undertook to make him heir of his *Zamíndarí* and wealth. *A* subsequently married a second wife, and, during the lifetime of his adopted son *B*, adopted a second son *C*. Both these adopted sons lived in *A*'s house, who, while they were minors, made a division of his ancestral and other estate between them, in certain proportions. *B*, when he came of age, entered into possession of his share; but *C*, being still a minor, *A* managed his share for him, and died during his minority. At *A*'s death, *B* claimed the right of succession to the whole of *A*'s estate and property, insisting that *A* was precluded from alienating any portion of the estate to his, the first adopted son's, prejudice; and that the adoption of *C* during his lifetime was illegal and void. Held, on appeal to the Judicial Committee of the Privy Council, reversing the decision of the Sudder Adawlut at Madras, that, by the Hindú law, the second adoption of a son, the first adopted son being alive, and retaining the character of a son, was an illegal and void act.[1] *Rungama* v. *Atchama and others*. 29th Feb. 1848. 4 Moore Ind. App. 1.

2. A widow cannot adopt a son without the permission of her deceased husband having been given, or that of her father-in-law, or of the other elders of the family, being obtained. *Ramasashien* v. *Akyalandummal*. 22d Nov. 1849. S. A. Decis. Mad. 115.—Hooper & Thompson.

3. An adoption of a son as a co-heir, with a son living and retaining the character of a son, is invalid. *Joy Chundro Raee* v. *Bhyrub Chundro Raee and another*. 18th Dec. 1849. S. D. A. Decis. Beng. 461.—Barlow, Colvin, & Dunbar.

4. And a permission given for such adoption as co-heir cannot be converted into a permission for the distinct purpose of the adoption of a son, after the death of the natural son, living at the date of permission. *Ibid.*

II. The qualification and right to be adopted.

5. Among the *Sudra* Cast a Hindú may adopt a son from a *Gotram* different from his own. *Rungama* v. *Atchama and others*. 29th Feb. 1848. 4 Moore Ind. App. 1.

6. The adoption of a sister and a brother, to the prejudice of the legal heirs, is illegal and invalid. *Toolooviya Shetty* v. *Coraga Shettaty and another*. 13th Oct. 1849. S. A. Decis. Mad. 75.—Thompson & Morehead.

III. Form of Adoption.

7. The consent of a wife to the adoption of a son by her husband, a childless Hindú, is not essential to the validity of the adoption. Adoption is the act of the husband alone, although the wife may join in it.

[1] This most important decision, reversing that of the Sudder Adawlut at Madras, sets the disputed question at rest as to the legality and validity of a second adoption during the lifetime of a son previously adopted, so far as the law of the south is concerned. The reader will find all the authorities relating to this point of the law of Adoption quoted and contrasted in the report of this case by Mr. Moore. No one, however, can peruse that report without regretting that so many of the authorities therein referred to still remain untranslated.

Rungama v. *Atchama and others.* 29th Feb. 1848. 4 Moore Ind. App. 1.

8. Where, in the Lower Court, no objection was taken either verbally or in the pleadings to the manner or legality of an alleged adoption, the *fact* only being denied; it was held, that, on appeal, the request of the appellant that the Hindú law officer should be consulted, with a view to ascertain whether the adoption was attended with all prescribed ceremonies, or not, could not be complied with. *Mt. Moolleh* v. *Purmanund.* 26th June 1849. 4 Decis. N. W. P. 201.—Lushington.

9. Where the plaintiff claims the full rights of an ordinary adoption, a different form of adoption (in this case *Dwyámushyáyana*) cannot be supposed. *Mt. Eedul Koonwur* v. *Koonwur Dabee Singh.* 23d Sept. 1850. 5 Decis. N. W. P. 341.—Begbie, Lushington, & Brown.

4. *Evidence of Adoption.*

10. It is not sufficient to establish the validity of an adoption, that it was performed in good faith (*i. e.* with a *boná fide* intention of adopting), but the requirements of the Hindú law, and the carrying out of those requirements, must be inquired into. *Teeloke Chundur Raee* v. *Gyan Chundur Raee.* 18th Sept. 1847. S. D. A. Decis. Beng. 554. —Tucker, Barlow, & Hawkins.

11. Where there is conflicting evidence upon the fact of an adoption, much will depend upon the probabilities of the case, to be collected from facts as to which both parties are agreed. As, in the case of a childless Hindú, advanced in years, where it was in the highest degree improbable that he could have any children by his wives, and he had adopted a boy, in despair of having issue, who died in his adoptive father's lifetime, and the fact of his religious tenets, by which his salvation depended upon his leaving a son to perform his funeral oblations. Held, that these were strong probabilities in favour of such an adoption. *Huradhun Mookurjia* v. *Muthoranath Mookurjia and others.* 15th Feb. 1849. 4 Moore Ind. App. 414.

12. The evidence of witnesses to the fact of a parol adoption, without deed, was contradictory, the Provincial and Sudder Courts in India held that a claimant to the succession, as adopted son, had not established, by creditable testimony, the fact of such adoption. Upon appeal, such decrees were reversed; the Court holding, that the presumption, in the circumstances, was in favour of the adoption, and that the evidence was sufficient to establish the claimant's title. *Ibid.*

ADULTERY.—See Criminal Law, 88.

ADVOCATE GENERAL.

1. Held, that by the 53d Geo. III. c. 155. s. 111., the Company's Advocate-General is entitled to appear and represent the Crown in informations for the administration of charitable funds. *Attorney-General* v. *Brodie and others.* 15th Dec. 1846. 6 Moore 12. 4 Moore Ind. App. 190.

ÆRA.

1. When not otherwise specified, the æra current in any particular district is to be presumed. *Girdharee Purshad, Petitioner.* 11th Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 124.—Hawkins.

AFFIDAVIT.

1. In shewing cause against an attachment for non-performance of an award made a rule of Court, affidavits discussing the merits are inadmissible. *Regina* v. *Hume and others.* 12th Nov. 1849.—1 Taylor & Bell, 81.

AFFIRMATION.—See Evidence, 140, 141.

AFFRAY.—See Criminal Law, 2 *et seq.* 89.

AGENCY DEPARTMENT.—See Jurisdiction, 44, 45.

AGENT AND PRINCIPAL.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 4.
1. *Generally*, 4.
2. *Liability of Agent to Principal*, 7.
3. *Obligation of Principals to third persons*, 8.
4. *Liability of Agent to Third persons*, 17.
5. *Evidence of Agents.*—*See* Evidence, 41, 42.

I. In the Supreme Courts.

1. *A* was the agent to let and manage certain premises, as well as general agent for *B*, who was tenant of *C*. When *B* became tenant, loose materials, part of the freehold, and as such the property of the landlord *C*, but of trifling value, were lying upon the premises. *A* underlet, in the name of *B*, to *D*, and sold to him fixtures and other things of value upon the premises, including the loose materials. *A* gave a general receipt, in the name of *B*, for the price. Held, that there was no proof of conversion of the loose materials by *B*. *Oakes* v. *Gooroochurn Poramanick.* 19th Jan. 1846. Montriou, 21.

2. Where the agents of the plaintiff, being in difficulties, had directed the defendant to sell goods of the plaintiff consigned to them, and to retain the proceeds for the purpose of preventing their being mixed up with their other monies, and the defendant agreed to this and received the proceeds, but did not pay them over to his immediate employers; he was held liable to the plaintiff in an action for money had and received. *Hornby and another* v. *Brijonauth Dhur.* 22d Mar. 1849. 1 Taylor & Bell, 15.

3. The vendor's money in the hands of a sub-agent of his agent may be stopped by him in the hands of such sub-agent on the insolvency of the intermediate agent. *Ibid.*

II. In the Courts of the Honourable Company.

1. *Generally.*

4. A general and known *Mukhtár* may buy landed property for, and in the name of, his principal, in the execution of a decree of a Civil Court, without producing his authority from his principal for so doing before the Collector of the Public Revenue empowered to effect the sale on enforcement of the decree. *Babu Hurri Singh, Petitioner.* 9th Feb. 1839. 2 Sev. Cases, 309.—Reid and Money.

5. Constructions 607 and 809 regarding *Mukhtárs* are inapplicable to the Civil Courts. But should a *Mukhtár* misconduct himself, he can be debarred from going into the Record Office. *Bishen Dial Singh, Petitioner.* 12th Aug. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 145.—Hawkins.

6. When *A* had already sued *B* as the attorney of *C* in the Zillah Court, and had obtained a decree in his favour; it was held, that he could not afterwards object to the competency of *B* to sue as *Mukhtár* of *C*. *Nowell* v. *Becher and another.* 26th Sept. 1845. S. D. A. Decis, Beng. 311.—Rattray, Tucker, & Barlow.

2. *Liability of Agent to Principal.*

7. *A* had money deposited in the hands of *B*, a *Mahájun*. From this deposit the Government revenue of

A's estate was to be paid into the Collector's treasury. In *B*'s account, several items appeared of sums paid as revenue, which did not appear as so paid in the Collector's accounts. *A* sued *B*, *C*, the *Mukhtár* through whom the payments were said to have been made, and *D* and *E*, who were stated also to have been employed in the payments, for the amount of these sums.* It appeared that the money was actually sent by *B*, but he had no authority to pay in the revenue, such authority being given to *C*. Held, that *B* was not liable, and a decree was accordingly given against *C*, *D*, and *E*. *Golukchunder* v. *Kewulnurain Punthee and others.* 23d Feb. 1846. S. D. A. Decis. Beng. 50.—Shaw & Jackson.

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3. *Obligation of principals to third persons.*

8. A claim for money borrowed by agents was, under the circumstances, decreed against their principals, on proof that the loan was on their account, and applied to their use, though no authority for the *Mukhtárs* to incur the loan was produced. *Sreewunt Lall Khan* v. *Macintosh.* 27th March 1847. S. D. A. Decis. Beng. 90.—Rattray.

9. The principals in a trading concern were held to be bound by the acts of their agents, though no written authority had been granted by the former, formally accrediting the latter to the parties with whom they traded, in consequence of strong evidence connecting the principals and their agents. *Gourchunder* v. *Hoolassee Shah.* 27th April 1848. 7 S. D. A. Rep. 488.—Jackson, Hawkins, & Currie.

10. A principal cannot be held responsible for debts incurred in his name by his *Gumáshtah*, unless there be positive and undeniable proof that the latter was the duly-constituted agent of the principal in his dealings with the creditor. *Gopeenath* v. *Indurmun Ram Sahoo.* 31st July 1848. 3 Decis. N. W. P. 265.—Thompson & Cartwright.

11. A party was held not to be bound by a bond executed by his agent, where there was no proof of previous special authority to the agent to execute the bond, or of subsequent recognition by such party of the act of the agent. *Rohinee Dibbea Chowdhrain* v. *Sheeb Ram Gir and others.* 20th Dec. 1849. S. D. A. Decis. Beng. 474.—Barlow, Colvin, & Dunbar.

12. Principals having given their agent a power of attorney to borrow money on their account, and having executed a bond for the actual amount received by him as a loan on their behalf, are liable to the lender for the whole of such amount, notwithstanding any misappropriation of the money by the agent. *Mt. Mun Mohunnee and another* v. *Gunga Purshad and others.* 1st May 1850. S. D. A. Decis. Beng. 165.—Jackson & Colvin. (Dick dissent.)

13. A suit on a bond for the amount of costs of a suit, signed by an agent only, as such, for another party by whom the costs were due, will not lie against the alleged principal, unless it be proved that the agent signed the bond upon due authority from the principal. *Baboo Rajnurain Singh* v. *Mt. Gunesh Koowur and another.* 11th June 1850. S. D. A. Decis. Beng. 287. —Barlow, Jackson, & Colvin.

14. A party, dealing with another, through his agent or servant, remains answerable to the person with whom he deals, for any debts contracted, although he may have given money to his agent for the discharge of such debts, and can prove that the default in payment arose from misappropriation of the money by his agent. *Prosononath Raee* v. *Nation.* 26th June 1850. S. D. A. Decis. Beng. 314.—Barlow, Jackson, & Colvin.

15. To make a principal responsible for the acts of his agents, there must be proof either that special

authority was given to the agent to transact business with a particular firm, or that, without such special authority, the agent has transacted business, *generally*, on behalf of his principal, and that the latter has ratified his agent's proceedings. *Bhoondoo Lall* v. *Munohur Dass.* 13th Aug. 1850. 5 Decis. N. W. P. 236.—Begbie, Deane, & Brown.

16. In the absence of any specific power given to an agent to borrow, and also of any instances of consent of the principal to his borrowing, the act of the agent cannot be held binding on the principal, in so far as respects a claim set up by the lender. *Rohinee Dibbea Chowdhrain* v. *Sheeb Ram Gir and others.* 20th Dec. 1849. S. D. A. Decis. Beng. 474.—Barlow, Colvin, & Dunbar. *Mt. Kenajuk Oomut Bibi* v. *Lalchand Bothea.* 26th Dec. 1850. S. D. A. Decis. Beng. 599.—Dick, Barlow, & Colvin.

IV. Liability of Agent to third persons.

17. A *Gumáshtah* is not answerable for the acts of the firm which he serves. *Rung Loll* v. *Sheikh Booddhoo and another.* 6th Sept. 1847. 2 Decis. N. W. P.—Tayler, Begbie, & Lushington.

18. A suit on a bond for the amount of costs of a suit will not lie against an agent, who signed only as such for another party by whom the costs were due, and who confessedly received on his own part no consideration for the bond. *Baboo Rajnurain Singh* v. *Mt. Gunesh Koowur and another.* 11th June 1850. S. D. A. Decis. Beng. 287. —Barlow, Jackson, & Colvin.

AGREEMENT.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 2.
1. *Generally*, 2.
2. *Fraudulent Agreement.*— *See* Action, 63.

I. In the Supreme Courts.

1. Where a parol agreement between two parties is recited in a deed under seal, but not in such a way as to create any higher remedy (the deed not in fact containing covenants by the parties to abide by such new arrangement), the doctrine of merger does not apply.[1] *Braine* v. *Muttyloll Seal.* 22d Nov. 1849. 1 Tayler & Bell, 97.

II. In the Courts of the Honourable Company.

1. *Generally.*

2. The conditions of a deed of agreement, duly proved, must be fulfilled, and a plea by defendant of his ignorance of some of the details, which he even proved to be false, was held not to be good in law. *Nursappa Virjyaree* v. *Rugooputtee Bhut Oopadya.* 28th July 1841. Bellasis, 22.—Marriott, Giberne, & Greenhill.

3. A party to an agreement cannot sue for performance of it if he have not himself performed his part. *Amanee Tewaree* v. *Sunth Purtab Mohun Thakoor and others.* 1st May 1849. S. D. A. Decis. Beng. 133.—Dick.

4. Where *A* had executed a document in favour of *B*, agreeing to pay him Rs. 300 to induce him not to appeal against a decision passed against him in an original suit, and the agreement was executed after the appeal time was expired; the Sudder Adawlut held, that such document was legal and valid, and decreed the amount sued for to *B*, together with all costs. *Vengapien* v. *Nanoovien and another.* 9th Aug. 1849. S. A. Decis. Mad. 39. —Thompson & Morehead.

5. The widows of a deceased Rá-

[1] See the cases *Twopenny* v. *Young*, 3 B. & C. 208; *Yates* v. *Aston*, 4 Q. B. 182; *Baker* v. *Harris*, 9 A. & E. 532.

jah agreed to pay a certain portion of their late husband's debts by instalments, in consideration of an assignment of certain lands, and a money allowance for their maintenance by his brother, who was the Rájah's heir and representative, and to make over to him the creditors' acquittances for the amount. Held, that on their failing to observe the conditions of the agreement, the brother, as heir and representative of the late Rájah, was entitled to bring his action against them on the agreement to compel the observance by them of its conditions. *Rájah Dummur Singh* v. *Ranee Sudosun and another.* 15th July 1850. 5 Decis. N. W. P. 176.—Begbie, Dean, & Brown.

ALIEN.

1. An alien prisoner of war cannot claim a writ of *habeas corpus* as of right. *In the matter of the Maharanee of Lahore.* 5th Dec. 1848. Taylor, 428.

2. The English law relating to personal liberty extends, in the *Mofussil,* to *British* subjects only. *Ibid.*

ALIENATION.—See Ancestral Estate, 1, 2, 3. 6, 7; Attachment, 24 *et seq.*; Evidence, 25; Grant, 1 *et seq.*; Hindú Widow, 6 *et seq.*; Religious Endowment, 4 *et seq.*

ALIMONY—See Action, 141.

ALLOWANCE.

1. The defendant, by a deed executed by him, agreed to make up any loss to the plaintiff from a sum received by him as *Nánkár,* which *Nánkár* was afterwards disallowed by the revenue authorities. Held, that the defendant was bound to make up the loss sustained by the plaintiff by other means, when the source from which such loss was to have been paid according to the deed had failed. *Roostum Ali Khan* v. *Seetulpershad.* 13th Aug. 1849. 4 Decis. N.W.P. 274.—Thompson.

2. An allowance, payable under a judgment of the Courts, from the proceeds of *Lákhiráj* lands, ceases on the resumption of such lands on account of the invalidity of the tenure. *Ramchunder Baboo, Petitioner.* 20th June 1842. 1 S. D. A. Sum. Cases, Pt. ii. 32.—Rattray & Reid.

3. The plaintiff formerly received from the father of the defendant a certain annual allowance of grain and a certain portion of land. At the Settlement, a monthly stipend was declared payable by the defendant to the plaintiff and his brother, in lieu of the grain; the plaintiff objecting to the arrangement proposed by the Settlement Officer, and desiring to adhere to the original agreement. The plaintiff brought an action to recover what he considered he was entitled to under the former agreement, but it was rejected by the Lower Courts under the law of limitation; and an opinion was recorded by the Judge, that the plaintiff might, nevertheless, bring his action under the award of the Settlement Officer. This he did accordingly, and obtained a decree in the Lower Courts. Held, on special appeal, that the fact on which the plaintiff founded his claim was not to be looked upon as a mere agreement, which he refused to acknowledge; as the Settlement Officer, having endeavoured to persuade the parties to come to an agreement, and failed, had recorded his own opinion: and that the objection urged at the time by the plaintiff to the proceedings of the Settlement Officer did not amount to a denial of the ground upon which he founded his claim, such as to prohibit him from afterwards pleading that arrangement. *Teekum Singh* v. *Luchmun Singh.* 19th Aug. 1847. 2 Decis. N. W. P.

276.—Tayler, Begbie, & Lushington.

4. A decree for subsistence allowance, which exceeds the profits of an estate, cannot be given. *Mohunder Singh* v. *Urjoon Singh and others.* 4th Oct. 1847. 2 Decis. N. W. P. 367.—Tayler.

5. In a suit by *A,* claiming an annual allowance out of *B*'s share of a certain *Shrotriyam,* under two grants originally made to his ancestor by the original *Shrotriyamdár, B*'s grandfather, and subsequently renewed by the succeeding inheritors, the claim was disallowed by the Sudder Adawlut, the fact that the original *Kaul* had been twice renewed by succeeding heirs being sufficient to prove that the allowance was not considered a permanent charge on the property without the consent of the actual holder of the *Shrotriyam. Viswasu Ramaya* v. *Vahidally Beg.* 3d Sept. 1849. S. A. Decis. Mad. 51.—Thompson.

ALLUVIAL LANDS.—See River, *passim.*

ÁLTAMGHÁ. — See Pre-emption, 8.

AMEEN.

1. The order of a Zillah Judge, directing a refund of a portion of the allowance granted by a lower Court to an Ameen for conducting a local investigation, cannot be contested by a regular suit against the party charged with the cost of the investigation. *Isree Dutt, Petitioner.* 13th Dec. 1841. 1 S. D. A. Sum. Cases, Pt. ii. 19.—Reid.

2. The nature of the inquiry conducted by an Ameen, and how the result tended to establish the claim to a party in a suit, must be stated in the decree; and it is not sufficient merely to state that from such inquiry the property appears to belong to such party. *Hurchundur Ghose* v. *Sheikh Kumuruddeen Sirkar and others.* 4th Feb. 1847. S. D. A. Decis. Beng. 40.—Tucker.

3. In a boundary dispute, decided on the reports of two Ameens, whose statements of the quantity of the land in dispute differed; it was held, that the Court was competent to adopt that statement which it deemed most trustworthy. *Jhummun Singh and others* v. *Birj Beharee Singh and others.* 6th Feb. 1847. S.D.A. Decis. Beng. 41.—Rattray.

4. An appellant making no objection to an Ameen's assessment in the Lower Court is incompetent to raise such objection in the Sudder Dewanny Adawlut. *Ramcoomar Dhur* v. *Muharaja Kishen Kishwur Manick.* 26th Dec. 1848. S.D.A. Decis. Beng. 886.—Jackson.

5. A plea in defence, averring the realization of a debt from collections of a farm, should be sustained by proofs offered in support of it; and a Court ought not to depute an Ameen to make a local inquiry on the point. *Seetul Purshad* v. *Gour Purshad and others.* 4th Sept. 1849. S. D. A. Decis. Beng. 379. —Dick, Barlow, & Colvin.

6. An Ameen, having been sent for local inquiry, filed his papers without oath; he subsequently took the oath under the Circular Order, which, however, only regarded the future. Held, that there was no oath, according to law, to the correctness of the report, and the case was returned to the Judge, with order to swear the Ameen to the correctness of his report, and decide the case over again.[1] *Sheoburt Misr and others* v. *Raee Ramkishen Dass.* 12th Dec. 1849. S. D. A. Decis. Beng. 444.—Jackson.

6 *a.* In a case where the directions contained in the Circular Order of the 31st Dec. 1841, respecting the

[1] See the case of *Shah Nawaz Khan* v. *Clement.* 5 S. D. A. Rep. 261.

duties of Ameens sent out to inquire into *Wásilát*, had not been duly acted upon, the Sudder Dewanny Adawlut reversed the orders appealed against, and commanded obedience to the same. *Kalikanth Lahori, Petitioner.* 9th April 1850. 3 Sev. Cases, 45.—Dick.

7. A local inquiry must be made by an Ameen duly empowered, and cannot be made by the *Názir* of the Court. *Jye Ram Bhuttacharje* v. *Ram Komar Chatterjee and others.* 27th April 1850. S. D. A. Decis. Beng. 155.—Barlow & Colvin.

8. Maps, and reports of Ameens deputed to make local inquiries must not be set aside without the reasons for so doing being clearly set forth in the Judge's decree. *Shamanund Dey* v. *Bipperchurn Bugdoee and others.* 9th May 1848. S. D. A. Decis. Beng. 426.—Tucker. *Chowdhree Damoodur Das and others* v. *Khettri Burr Bhugwan Raee Singh.* 11th May 1848. S. D. A. Decis. Beng. 441. — Tucker. *Kartick Churn Dass* v. *Soormonee Goalee.* 21st May 1850. S. D. A. Decis. Beng. 219.—Barlow & Dunbar.

AMENDMENT.

I. In the Supreme Courts, 1.

1. *Of Bills*, 1.

II. In the Courts of the Honourable Company, 5.

1. *Generally*, 5.

2. *Of Valuation of Suit.*—See Action, 133. 136. 151.

I. In the Supreme Courts.

1. *Of Bills.*

1. Where a bill to impeach a settled account stated errors in general terms and results only, not specifically; motion was made under the 7th Equity Rule to amend, by adding particulars of false entries, and also evidence in contradiction of the answer, upon affidavit stating generally ignorance of the particulars by the plaintiffs at the time of filing the bill, subsequent information obtained by means of conversations and communications between two *Gumáshtahs* of the plaintiffs, and results given to the attorney after replication filed. The motion was refused, it not appearing that diligence had been used to obtain the information before the filing of the bill. *Baharryram and another* v. *Syamberram.* 16th Jan. 1846. Montriou, 1.

2. Semble, If a party prematurely commence a suit, at the risk of supplying defects by amendment, and from subsequent information, which he had not taken adequate means to acquire in the first instance, he will not meet with the indulgence or aid of the Court. *Ibid.*

3. After plea allowed, the complainant will not be allowed to amend his bill, without stating fully the proposed amendments in his notice of motion. *Beharryram and another* v. *Sewemberam and another.* 1st July 1847. Taylor, 112.

4. When the evidence shews a larger payment than the sum actually pleaded, the plea cannot be amended by inserting the larger amount.[1] But a new trial will be granted on terms. *Bhobosoonderee Dabee* v. *Thakoordass Mookopadhiah.* 16th Nov. 1848. Taylor, 402.

II. In the Courts of the Honourable Company.

1. *Generally.*

5. A decree cannot be amended to the prejudice of a party not before the Court. *Buldeo Singh* v. *Shewaram and another.* 7th Jan. 1848. 3 Decis. N. W. P. 9.—Tayler, Cartwright, & Begbie.

[1] 2 Sm. & Ry. 48.

ANCESTRAL ESTATE.[2]

I. Bengal Law, 1.
II. Other Laws, 5.

I. Bengal Law.

1. Held, that a son might bring an action during his father's lifetime for the recovery of an ancestral estate alienated by his father without his, the son's, consent or concurrence, such alienation being illegal by the law of the country where the estate was situated. *Gour Purshad and another* v. *Ram Gholam.* 23d May 1845. S. D. A. Decis. Beng. 175. —Rattray.

2. But this was afterwards overruled, and it was decided that it is not competent to a son, even in the provinces where the law of the *Mitákshará* prevails, to bring a suit for possession of an ancestral estate and mutation of names as on *exclusive* proprietary right during the lifetime of his father, on the ground that the father had made an illegal alienation of the estate by a sale without the son's consent, and that not only was the sale illegal, on that account, but that the father had, by making it, divested himself of his own interest. *Chutter Dharee Lal* v. *Bikaoo Lal.* 11th June 1850. S. D. A. Decis. Beng. 282.—Barlow, Jackson, & Colvin.

3. A grandson having made himself a party to a sale of ancestral property by his grandmother, whose heir he became after her death; it was held, that his relinquishment of his right to heirship, in favour of a collateral heir, did not void the sale. *Deep Chund Sahoo and others* v. *Hurdeal Singh.* 14th June 1849. S. D. A. Decis. Beng. 204.—Dick, Barlow, & Colvin.

4. Ancestral property of minors, who had been adopted by widows, was held to be liable for debts incurred by the widows, previous to their adoption, partly for payment of the debts of the ancestor, and partly to pay the expenses of their own adoption. *Hurkoomar Raee* v. *Lukee Nurain Bysack and others.* 25th Feb. 1850. S. D. A. Decis. Beng. 29.—Dick.

II. Other Laws.

5. Children can claim a share in ancestral property during their father's lifetime, and no parent can make away with such property to the detriment of the children. *Baee Gunga* v. *Dhurumdass Nurseedass.* 27th July 1841. Bellasis, 16.—Marriott, Giberne, & Greenhill.

6. A sale by a Hindú of ancestral immovable property, when a legitimate son of the vendor was living, and made without having first obtained the consent of that son, was declared void, as being contrary to the Hindú law.[1] *Mukoon Misr and another* v. *Kunyah Ojah.* 19th Dec. 1846. 1 Decis. N. W. P. 275. —Tayler, Thompson, & Cartwright.

7. *A*, a *Zamíndár* in the Northern Circars, adopted a son *B*, and subsequently adopted another son *C* during the lifetime of *B*. *B* and *C* both lived in *A*'s house, who, while they were minors, made a division of his ancestral and other estate between them, in certain proportions. *B*, when he came of age, entered into possession of his share, but *C* being a minor, *A* managed his share, and died during his minority. Held by the Judicial Committee of the

[2] See Vol. I. of this work, title Ancestral Estate, in the Notes, for references to the authorities regarding the law of Ancestral Property

[1] This case, which was an appeal from Zillah Goruckpore, where the law of Mithila is prevalent, was decided on the *Vyavashtah* of the Law Officer of the Court, and on the view of the law on this point taken by Sir W. Macnaghten, viz. "the father is incompetent to give, sell, mortgage, or make any other alienation of his immovables and bipeds, where a legitimate son is living, *without his consent.*" (2 Macn. Princ. H. L. 234.)

Privy Council, that *B*'s acquiescence in the division, after he came of age, did not preclude his right to recover the ancestral estate, as *A* had no power to alienate any portion of such ancestral estate to *B*'s prejudice.[1] *Rungama* v. *Atchama and others*. 29th Feb. 1848. 4 Moore. Ind. App. 1.

ANUMATÍ PATRA.—See Evidence, 36; Hindú Widow, 5; Relinquishment of Claim, 1.

ANSWER.—See Practice, 16 *et seq.* 196 *et seq.*

APPEAL.

I. To the Judicial Committee of the Privy Council.

1. *When allowed*, 1.
2. *Notice of Appeal*, 4.
3. *Appeal by a Pauper*, 6.

II. From the Supreme Courts, 7.

III. From the Courts of the Honourable Company, 9.

1. *When allowed*, 9.
2. *When disallowed*, 19.
3. *Petition of Appeal*, 38.
4. *Dismissal of Appeal*, 39.
5. *Time for Appeal*, 44.
6. *Revivor of Appeal*, 55.
7. *Default*, 59.
8. *Third party*, 61c.
9. *Valuation of Appeal*, 62a.
10. *Non-regulation Districts*, 67.
11. *Appeal by a Pauper*, 68.
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13. *Representation*, 72 a.
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    (a) *When allowed*, 105.
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    (c) *Certificate*, 131.
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    (e) *Time*, 142.
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16. *Decree.—See* Practice, 232 *et seq.*
17. *In Criminal Cases.—See* Criminal Law, 5 *et seq.*
18. *Evidence in Appeals.—See* Evidence, 142 *et seq.*
19. *Notice.—See* Notice, 7 *et seq.*
20. *Costs of Appeal.—See* Costs *passim.*

I. To the Judicial Committee of the Privy Council.

1. *When allowed.*

1. Leave to appeal was granted, on payment of costs, from an order of the Sudder Dewanny Adawlut at Bombay, decreeing interest upon the amount awarded by the judgment of the Court; the appellant having failed to apply to the Court in India within six months, as required by the Order in Council of the 10th April 1838. *Kirkland* v. *Modee Pestonjee Khoorsedjee.* 2d Dec. 1843. 3 Moore Ind. App. 220.

2. An appeal having been allowed by the Court below, and referred by Her Majesty to the Judicial Committee for adjudication in the ordinary way, their Lordships, though of opinion that there existed no Charter right of appeal, thought it a fit case for the allowance of a special appeal; and having heard the case upon its merits, directed a petition for special leave to appeal to be presented to Her Majesty; which, being referred to them, they recom-

[1] In their judgment in this case the Judicial Committee of the Privy Council considered the division by *A* to be in the nature of a gift *inter vivos*, and, so far as the property not ancestral was concerned, decreed a share to *C*. It would seem, therefore, that had the case been decided according to the Bengal law, *C* would have been entitled to a share in the ancestral estate. See *Doe dem. Juggomohun Roy* v. *Neemoo Dossee.* Mor. 90. Cl. R. 1834, 101.

mended the allowance thereof, and that the appeal be placed in the same plight and condition as that originally referred to them. *In the matter of Minchin.* 4th March 1847. 6 Moore, 43. 4 Moore Ind. App. 220.

3. The Supreme Court, in overruling objections to the jurisdiction of the Court in an action of trespass against a Collector of revenue, refused leave to appeal, the subject-matter of the action being trifling, and under the amount required by the rules of the Privy Council. Upon petition, the Judicial Committee granted leave to appeal, but upon terms of the East-India Company paying the respondent's costs of the appeal, to enable him to appear to prevent the question being argued *ex parte.* *Spooner* v. *Juddow.* 14th Feb. 1850. 6 Moore, 257. 4 Moore Ind. App. 353.

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2. *Notice of Appeal.*

4. The Judicial Committee of the Privy Council declined to hear an appeal from the Sudder Adawlut at Madras *ex parte,* without evidence of the respondent having been personally served with notice that the appeal was pending, and ordered the appeal to stand over, with leave for the appellant to proceed in the Court below, to render the service of such notice effectual. *Konadry Valabha* v. *Valia Tamburati.* 3d Feb. 1844. 4 Moore Ind. App. 213, note.

5. No appearance having been entered by the respondents to an appeal from India, and the appellant's case being ready to lodge for hearing, the Judicial Committee of the Privy Council, upon the application of the appellant, made an order that the respondents should be served with notice, that unless they brought in their case without delay, the appeal would be heard *ex parte,* giving the appellant liberty to proceed in the Court below to render such service effectual; and the Court was ordered to certify to the Judicial Committee what had been done with respect to the same. *Wise* v. *Kishenkoomar Bous and another.* 12th Feb. 1847. 4 Moore Ind. App. 201.

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3. *Appeal by a Pauper.*

6. Semble, Although the Courts in India admit a party to appeal to England *in formâ pauperis,* yet the appellant ought to make a special application to the Queen in Council for leave to prosecute such appeal *in formâ pauperis.* *Munni Ram Awasty* v. *Sheo Churn Awasty and another.* 4th Dec. 1846. 4 Moore Ind. App. 114.

II. From the Supreme Courts.

7. *Quære,* whether the rules of the Ecclesiastical Courts in Doctors' Commons relating to the doctrine of pre-emption of appeal apply to an ecclesiastical cause in the Supreme Court at Calcutta, so as to deprive a party of the Charter right to appeal within six months from the decree, &c.? *Casement* v. *Fulton and another.* 19th June 1845. 5 Moore, 130. 3 Moore Ind. App. 395.

8. An order made by the Supreme Court at Madras, at its own instance, for the dismissal of the Master of the Court for alleged official misconduct in the taxation of a bill of costs was held, by the Judicial Committee of the Privy Council, not to be an appealable grievance within the Madras Charter of Justice. *In the matter of Minchin.* 4th March 1847. 6 Moore, 43. 4 Moore Ind. App. 220.

III. From the Courts of the Honourable Company.

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1. *When allowed.*

9. Held, that a summary appeal will lie from an interlocutory order, passed in the course of a regular suit, regarding the valuation of the

property sued for.[1] *Ram Dolal Lushkur, Petitioner.* 19th April 1841. 1 S. D. A. Sum. Cases, Pt. ii. 6.—Reid.

10. The Sudder Dewanny Adawlut will admit a summary appeal from an order of nonsuit. *Jhomari Bibi, Petitioner.* 31st Jan. 1842. 1 S.D.A. Sum. Cases, Pt. ii. 23.—Reid.

11. A regular appeal lies to the Sudder Dewanny Adawlut from the decision of a Zillah Judge, passed on the re-trial of a case in which *both* the decisions of the Principal Sudder Ameen and the Zillah Judge had been previously, on trial by the Sudder Dewanny Adawlut, held to have been incomplete. *Chowdhury Saheb Singh and another* v. *Tilookdharee Sahoo.* 6th July 1842. 2 Sev. Cases, 9.—Reid and Tucker.

12. Where a case was sent back by the Judge with instructions to allow the plaintiff to file a supplementary plaint, and to decree the claim in favour of the plaintiff, and the Principal Sudder Ameen, disregarding the instructions of the Judge, decided the case on its merits, and dismissed the claim; it was held, that the suit ought to have been decided by the Sudder Ameen, but as it was tried by the Principal Sudder Ameen, his decision must be considered as an original decision, and, as such, regularly appealable to the Judge. *Mohunt Ram Pershad Doss* v. *Imamee Begum.* 26th April 1845. S. D. A. Decis. Beng. 134.—Tucker, Reid, and Barlow.

13. An appeal lies to the Zillah Judge from an order of a Principal Sudder Ameen refusing to admit an appeal under Act XVI. of 1845. *Radha Beebee, Petitioner.* 20th July 1846. 1 S. D. A. Sum. Cases, Pt. ii. 81.—Full Court.

14. Decrees passed in the Courts of the Principal Sudder Ameens are executed by those Courts, and are appealable in the first instance to the Zillah and City Judges, and only specially to the Sudder Dewanny Adawlut. *Bakhyakar Neogy* v. *Kalidas Neogy.* 27th July 1846. 2 Sev. Cases, 291.—Reid.

15. A summary appeal from a judgment passed in appeal by a Principal Sudder Ameen lies to the Sudder Dewanny Adawlut, and not to the Zillah Judge. *Khedun Thakoor and another, Petitioners.* 21st June 1847. 1 S. D. A. Sum. Cases, Pt. ii. 105.—Hawkins.

16. If an appellant can shew that no notice was served on him of a suit decided against him *ex parte* in the Lower Court, he may appeal from such decision. *Kooshyedass Bose* v. *Bamasoondri Dasi and another.* 16th Jan. 1847. S. D. A. Decis. Beng. 10.—Tucker. *Mt. Tara Munnee Dassee* v. *Ram Ruttun Shah and others.* 25th Nov. 1847. S. D. A. Decis. Beng. 613. —Hawkins.

17. But the appellant from an *ex parte* decision must shew cause for his default in the Lower Court before the merits of the case can be entered upon.[2] *Juggut Tara Chowdhrain and others* v. *Rumzan Banoo and others.* 1st Mar. 1848. S. D. A. Decis. Beng. 130.—Hawkins. *Radha Mohun Ghose* v. *Raja Burdakaunth Raee.* 18th Mar. 1848. S. D. A. Decis. Beng. 213.—Tucker, Barlow, & Hawkins.

17 *a*. Appeals from orders of the Lower Courts in execution of decrees in cases exceeding Rs. 5000 lie directly to the Sudder Dewanny Adawlut.[3] *Bajpai Raja Gangeish-*

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[1] This is according to Sec. 4. of Reg. VI. of 1793; and see Circular Order dated the 20th Aug. 1841, par. 3. But see *infra* Pl. 32.

[2] See the Circular Order of the 12th March 1841.

[3] Decrees passed by the Principal Sudder Ameens are executed by themselves, and were first appealable in a summary manner to the Zillah Judge, and then specially to the Sudder Dewanny Adawlut. See Sec. 22. of Reg. V. of 1831. By Circular Order of the 5th June 1838, and Sec. 2. of Act VI. of 1843, a summary appeal lies from the orders of the Principal Sudder Ameen, in cases exceeding the sum of Rs. 5000, direct to the Sudder Dewanny Adawlut. This rule is parallel to Sec. 4. of Act XXV. of 1837, for the admission of regular ap-

chandra Rai, Petitioner. 19th June 1848. 2 Sev. Cases, 413.—Hawkins.

17 *b.* Under Sec. 17. of Act. XI. of 1841, an appeal lies from the decisions of Military Courts of Requests to the Sudder Adawlut, where the amount claimed exceeds Rs. 200. And where, in a claim above that amount, the commanding officer referred the case to another Court for fresh inquiry, under Sec. 11. of the same Act, the decision on such reference was set aside by the Sudder Adawlut as illegal. *Ram Lall* v. *Muneeram Lall.* 30th Oct. 1849. S. A. Decis. Mad. 94.—Thompson & Morehead.

18. A defendant appearing in Court, but not being required by the Court, under Sec. 5. of Reg. IV. of 1793, to file an answer by a fixed date, is entitled, though he may not have filed an answer in the suit, to appeal upon the evidence on the record. *Muharajah Neelmonee Singh and others* v. *Luckheeram Mohut.* 13th June 1850. S. D. A. Decis. Beng. 292.—Barlow, Jackson, & Colvin.

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2. *When disallowed.*

19. Held, that an appeal from a Judge's order, under Sec. 27. of Act XXIX. of 1838, inflicting a fine on a landholder for permitting the manufacture of contraband salt on his estate, can be admitted only on special grounds. *Ramanath Chutterjea, Petitioner.* 13th July 1841. 1 S. D. A. Sum. Cases, Pt. ii. 14.—Reid.

20. A summary appeal does not lie to the Sudder Dewanny Adawlut from the order of a Zillah Judge rejecting an application for a review of his own judgment. *Muhammad Ewaz, Petitioner.* 13th Jan. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 22.—Reid.

21. There is no appeal to the Sudder Dewanny Adawlut from the order of a Zillah Judge dismissing a ministerial officer attached to the Court of a Moonsiff.[1] *Nilmadub Sirkar, Petitioner.* 23d Aug. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 38.—Court at large.

22. A summary appeal will not lie from an order of a Lower Court, rejecting a claim on a regular suit, because of the documentary evidence of the plaintiff being invalid for want of the prescribed stamp; the appeal must be regular.[2] *Calder, Petitioner.* 11th April 1843. 1 S. D. A. Sum. Cases, Pt. ii. 47.—Reid.

23. A defendant having in the Lower Court confined himself to pleading that he was a legitimate son, and entitled to inherit, cannot be admitted to appeal on the ground that, though he was illegitimate, he was still entitled to succeed. *Ranee Sreekaunth Deybee* v. *Sahib Perhlad Sein.* 9th Sept. 1846. S. D. A. Decis. Beng. 334.—Rattray, Tucker, & Barlow.

24. A conviction under Sec. 27. of Act XXIX. of 1838, is appealable to the Sudder Dewanny Adawlut only on special grounds as prescribed by Sec. 32. of the said Act. *Bishennath Biswas and others, Petitioners.* 11th May 1847. 1 S. D. A. Sum. Cases, Pt. ii. 98.—Tucker, Barlow, & Hawkins.

25. An order by a Principal Sudder Ameen *dismissing* a suit, *after hearing,* on the ground of want of jurisdiction, is not summarily appealable to the Zillah Judge under Sec. 4. of Act IX. of 1844, such law referring to cases which the principal Sudder Ameen might reject for *primâ facie* want of jurisdiction only. *Ranee Bhoobun Mye Debbea, Petitioner.* 5th Oct. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 121.—Hawkins.

26. The order of a Principal Sud-

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peals. Appeals from orders in execution of decrees of Sudder Ameens and Moonsiffs, under Sec. 7. of Reg. VII. of 1832, and Construction No. 1223, lie to the Zillah Judge, and are final under Sec. 5. of Act VI. of 1843.—Sev.

[1] See Construction No. 846.
[2] See Construction No. 805.

der Ameen rejecting, *by indorsement on the petition of plaint*, an original suit, as not cognizable by him, in a case exceeding Rs.5000 in value, is appealable to the Zillah Judge, and not to the Sudder Dewanny Adawlut. *Maharajah Chutturdharee Sahee Buhadur, Petitioner.* 27th Dec. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 122.—Hawkins.

27. The order of a Court rejecting an application for review of its own judgment is not open to appeal. *Bulram Das, Petitioner.* 22d Nov. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 121.—Hawkins.

27*a*. On re-trial of a regular case, after the admission of a review of judgment, the full bench affirmed their previous decision on the 3d Feb. 1847. Against this, another application was filed for reconsideration, and a petition was also preferred praying an appeal to the Queen in Council. The former was rejected, after deliberate consideration, on the 28th Sept. 1847, and the latter was granted. An application was now made to be allowed to prefer an appeal to the Queen in Council against the order of the 28th Sept. 1847. Held, that the orders of the Court in miscellaneous cases were not appealable to England, and the application was rejected accordingly.[1] *Gopalkrism Singh and another* v. *Lamb.* 16th Feb. 1848. 2 Sev. Cases, 505.—Barlow.

28. A decision of one Principal Sudder Ameen acting in the capacity of Moonsiff is not appealable to another officer of the same grade, but must be tried by the European Judge.[2] *Rugbur Misr* v. *Bhurt Rai.* 18th March 1848. 3 Decis. N. W. P. 88.—Tayler.

29. A summary appeal does not lie against the order of costs in a decree in a regular suit. *Bhurrut Chunder Mujoomdar and others, Petitioners.* 22d March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 136.—Hawkins.

30. Under Sec. 3. of Act XXIX. of 1841, no appeal lies from an order striking off a case on default, except a summary appeal on the point of default. *Bhowanee Dut Chowdhree and others* v. *Odilal Das and another.* 15th April 1848. S. D. A. Decis. Beng. 318.—Tucker, Barlow, & Hawkins.

31. A summary appeal will not lie from an order calling for proof. *Hoolas Rae* v. *Dowlut Ram Sahoo* 13th June 1848. 3 Decis. N. W. P. 193.—Tayler.

32. The law does not recognize an indiscriminate right of appeal from every interlocutory order passed during the trial of a suit. *Hoolas Rae* v. *Dowlut Ram Sahoo.* 13th June 1848. 3 Decis. N. W. P. 193.

33. An appeal from the interlocutory order of a Moonsiff will not lie except upon the question of valuation.[3] *Ibid.*

34. A summary appeal does not lie from an order disallowing objections to the trial of a suit, on the ground that another suit had been instituted elsewhere for the same subject of action. *Abheechurn Mookurjee, Petitioner.* 24th July 1848. 1. S. D. A. Sum. Cases, Pt. ii. 144.—Hawkins.

35. An interlocutory order in regard to the investigation of a pending suit is not appealable. *Sham Lall Jha and others, Petitioners.* 20th Nov. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 147.—Hawkins.

36. No appeal will lie against an incidental mention of a point, or opinion, in the course of the reasoning upon which a decree is founded. *Sheikh Nujeebolla Lushkur and ano-*

[1] See Sec. 4. of Reg. XXVI. of 1814; Construction No. 1249; and Construction No. 1102. See also the cases of *Sayyad MahummadAli Khan* v. *NagarAraBegum*, 1 Sev. Cases, 113; and *Johnston* v. *The East-India Company*, 1 Str. 21. See also the Introduction to Vol. I. of this work, p. cxxxi.

[2] Reg. XXV. 1837, s. 6.

[3] See *supra*, pl. 9, and Note.

ther v. *Gungapurshad Ghose and others.* 30th July 1849. S. D. A. Decis. Beng. 313.—Barlow, Colvin, & Dunbar.

37. An Appellate Court should not admit an appeal of a defendant, she having been absent in the Court of first instance, on her mere assertion, in excuse of her default, that she was a *Pardah Nishín. Hurchundur Chung* v. *Huripria Dibbea and others.* 17th Dec. 1850. S. D. A. Decis. Beng. 572.—Tucker & Jackson.

3. *Petition of Appeal.*

38. The *Vakíls* of the Court were required to certify, on the back of the petition of appeal preferred against an order of fine or confiscation in a salt case, the specific grounds on which the appeal was admissible in the Sudder Dewanny Adawlut, under Sec. 32. of Act XXIX. of 1838. *Bishennath Bose and others, Petitioners.* 27th May 1845. 2 Sev. Cases, 171.—Reid.

4. *Dismissal of Appeal.*

39. Held, that the Judge ought to have dismissed an appeal where it appeared that the lands he awarded had been previously decreed to the Government by the resumption authorities. *Deputy Collector of Pubnah* v. *Kirteenath Surmah Mujmodar.* 28th March 1846. S. D. A. Decis. Beng. 127.—Tucker, Reid, & Barlow.

40. Where the Lower Appellate Court dismissed an appeal on the sole ground of the appellant's default in the Court of first instance, without inquiring into certain pleas urged by them in their appeal to him, questioning the legality of the decision of that Court, and based on the Law of Limitation; it was held, on special appeal, that such dismissal by the Judge was contrary to the rule laid down in paragraph 4 of the Circular Order of the 16th April 1841. *Zorawur and others* v. *Ramgobind Doobe.* 12th July 1849. 4 Decis. N. W. P. 230.—Begbie.

41. A cross appeal was instituted to a former appeal suit decided by the Sudder Adawlut, objecting to a part of the Civil Judge's decree. Held, that as the point disputed was fully discussed in the former appeal, which confirmed the Civil Judge's decree, the appeal must be dismissed with costs. *Vadrawoo Kristniah* v. *Munnem Venkatarutnum.* 30th July 1849. S. A. Decis. Mad. 33.—Thompson.

42. According to the terms and spirit of Act XXIX. of 1841, and to the purport of Rules 1 and 3 of the Circular Order of the 3d Jan. 1845, No. 79, an appeal is to be regarded as dismissed of course without any proceeding on the part of the Court upon the expiration of any enlarged time which might have been fixed for filing pleadings. *Rampershad Singh* v. *Gungaram and others.* 8th Nov. 1849. S. D. A. Decis. Beng. 430.—Barlow & Colvin.

43. An appellant to the Sudder Dewanny Adawlut having, after filing her appeal, agreed, in a formal deed or petition before the Lower Court, to an adjustment of the subject-matter of the appeal; and, as one of the conditions of that deed, bound the appellant to put in a *Rázínámeh*, and, in the event of her failing to do so, empowered the respondent to file a copy of the deed, as a *Rázínámeh* on her part; the Court, on her acknowledging the execution of the deed, would not allow her appeal to be prosecuted, and dismissed it accordingly. *Kalee Mayce Dibah* v. *Kooroona Kaunth Lahoree.* 6th Aug. 1850. S. D. A. Decis. Beng. 379.—Dick, Barlow, & Dunbar.

5. *Time for Appeal.*

44. The Sudder Dewanny Adawlut cannot admit an appeal to the Judicial Committee of the Privy Council after the expiration of six calendar months from the date of the

judgment complained of. *Modoosooden Sandyul* v. *Rasmunnee Dassea.* 29th Sept. 1842. 1 S. D. A. Sum. Cases, Pt.ii. 39.—Tucker.

45. An application for review of judgment, forms no ground for extension of the period of appeal. *Ibid.*

46. The legal period for the admission of appeals is to be calculated exclusive of the day on which the decree or order appealed against was passed. Should the last day allowed be Sunday, it may be admitted on the following day. *Koonkoon Singh, Petitioner.* 29th May 1843. 1 S. D. A. Sum. Cases, Pt. ii. 49.—Reid.

47. Where an appeal from the Principal Sudder Ameen to the Judge had been filed, and the appellants had neglected, for above six weeks, to file their *Mujabbát;* it was held, that the appeal should have been struck off, under Act XXIX. of 1841, and that the circumstance that the case was subsequently referred for trial to the Principal Sudder Ameen by the Judge did not excuse the default of the appellants. *Jackson* v. *Gooroochurn and others.* 17th Dec. 1845. S. D. A. Decis. Beng. 462. —Reid, Dick, & Jackson.

48. In a case where the period of six weeks had expired during an adjournment of the Lower Court, on account of a native holiday, at which the Courts were closed, no default was held to attach to the appellant, as his reasons of appeal were filed immediately on the first re-opening of the Lower Court. The orders of the Lower Court, dismissing the said reasons, were accordingly reversed, and the appeal ordered to be re-admitted to its original number in the file, under Act XVI. of 1845. *Prankrishn Gopth, Petitioner.* 17th Aug. 1846. 2 Sev. Cases, 303.—Reid.

49. An appeal cannot be admitted by the Lower Appellate Court, after the lapse of the time prescribed by law, without a specification in the order of admission of the reasons for so doing. *Lotun Pandee* v. *Suddun Koormee.* 17th Sept. 1846. 1 Decis. N. W. P. 174.—Thompson, Cartwright, & Begbie.

50. And where the Judge stated it to be his opinion that the appellant did "*not* appear to have been all along prevented by circumstances beyond his control from presenting his appeal petition within the prescribed period," although he at the same time admitted that the appellant "had met with some obstacles to such presentation sufficient to warrant the admission of the appeal;" it was held, that such was not a "sufficient reason," as required by the law. *Ibid.*

51. But where the Judge allowed the defendants to appeal after the lapse of the period prescribed by the law, without assigning in detail his reasons for granting the indulgence; it was held, that he must be considered to have ruled that the excuses offered by the party desiring to appeal were satisfactory, although he would have done well had he been more explicit; and that the conciseness of the order did not form a sufficient ground for reversing the decision subsequently passed on the appeal. *Imrut Beebee* v. *Moonee Lall and others.* 25th June 1849. 4 Decis. N. W. P. 198.—Thompson, Begbie, and Lushington.

52. It being unnecessary to file, with an appeal to the Zillah Judge from a decision of a Collector under Sec. 30. of Reg. II. of 1819, a copy of the decision appealed against, any deduction of time for such purpose in calculating the period of appeal is illegal. *Jyekishun Mookerjee and another, Petitioners.* 20th Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 126.—Tucker, Barlow, & Hawkins.

52*a.* By Sec. 9. of Act XXV. of 1847, an appeal from the order of a Principal Sudder Ameen to the Zillah Judge of the district must be preferred within thirty days from the date of the order, to be calculated according to Cl. 10. of Sec. 8. of Reg. XXVI. of 1814.

Surbmungolah Deba, Petitioner. 1st Feb. 1848. 2 Sev. Cases, 405.—Hawkins.

52 *b*. A decree irregularly obtained in a Moonsiff's Court in an *ex parte* way is appealable, though the period of appeal may have elapsed; and enforcement of the decree may be stayed on security being furnished. *Kumal Mundul, Petitioner.* 19th Mar. 1849. 2 Sev. Cases, 471.—Jackson.

52 *c*. The reasons of appeal, and the attested copy of the decree appealed against (if not already in the Lower Court), must be filed in the Sudder Court within six weeks from the date of the receipt of the petition of appeal in Court. *Rani Jaydurga and others* v. *The Collector of Zillah Mungpore.* 14th May 1849. 2 Sev. Cases, 483.—Jackson.

52 *d*. In a case where the appellant, instead of giving in at once the whole of the stamp paper required for an attested copy of the decree of the Lower Court, had first furnished to the *Decree-nawis* thirty stamps, after a lapse of two months and twenty-five days from the date of the signing of the original decree, and twenty additional stamps twenty-four days after that, and again one stamp three days from the last supply; it was held, under the express terms of the Circular Order of the 8th May 1840, that no deduction of the intervals between furnishing portions of the stamp paper in the Zillah Court and the delivery of the decree to the *Vakil* of the appellant, could be allowed. *Ibid.*

52 *e*. An application filed on the last day of the period of six weeks, for an extension of the time, to enable the appellant to file the reasons of appeal, was refused by the Sudder Dewanny Adawlut, under the provisions of Act XXIX of 1841.[1] *Ibid.*

53. It was held to be a good and sufficient ground for preferring an appeal after the legal period, that a party complaining of wrongful acts done in execution of a decree was seeking for redress by a summary motion. *Syud Inayut Ruza* v. *Fletcher and others.* 6th Nov. 1849. S. D. A. Decis. Beng. 424.—Dick, Barlow, & Colvin.

53 *a*. In a summary appeal where the Zillah Judge had omitted to inquire why it had been preferred after thirty days, contrary to Sec. 9. of Act XXV. of 1837, the Sudder Dewanny Adawlut directed a compliance with the provisions of that law, and a dismissal of the appeal, unless it were proved that the appellant was prevented by circumstances beyond his control from presenting his appeal within thirty days from the date of the order of the Principal Sudder Ameen, to be calculated according to Cl. 10. of Sec. 8. of Reg. XXVI. of 1814. *Kashipurshad Sukul, Petitioner.* 13th July 1850. 2 Sev. Cases, 577.—Colvin.

54. The summary order of a single Judge of the Sudder Dewanny Adawlut, admitting an appeal after the prescribed period of three months, was held, under the circumstances, not to be open to question by the full bench convened for the disposal of the merits of the appeal. *Government* v. *Lamb.* 5th Aug. 1850. S. D. A. Decis. Beng. 374.—Barlow & Dunbar. (Dick dissent.)

54 *a*. The Zillah Judge having refused to admit an appeal from the de-

[1] This Act was modified by Act XVI. of 1845, but not so as to affect the above decision. By Sec. 1. of Act IV. of 1850, every petition of regular appeal in a case appealable to the Sudder Court must be presented to the Court in which the decision was passed within six weeks from the day of the decision; such petition of appeal only to contain notice that the party, being dissatisfied with the judgment, is desirous of appealing from it. This last-mentioned Act, however, was, by Sec. 4. of Act XXX. of 1850, declared not to be applicable to appeals by paupers, which are to be preferred in all respects as heretofore, excepting that the specific objections to the judgment and detailed reasons for preferring the appeal may be presented within three months, instead of six weeks, from the date of permission to appeal as a pauper.

cision of a Principal Sudder Ameen (permission to review which had been disallowed by the Zillah Judge), the Sudder Dewanny Adawlut, on summary appeal under Cl. 3. of Sec. 3. of Reg. XXVI. of 1834, directed its reception with reference to a previous order of its own, directing the petitioners, under the circumstances of the case, to appeal, notwithstanding the lapse of time. *Seetulchundur and another, Petitioners.* 5th Sept. 1850. 2 Sev. Cases, 601.—Dick.

6. *Revivor of Appeal.*

55 The Sudder Dewanny Adawlut directed the restoration to the file of the Zillah Judge of an appeal preferred jointly by two appellants, but struck off on the application of one of them. *Nundkisore Shaw, Petitioner.* 20th April 1841. 1 S. D. A. Sum. Cases, Pt. ii. 8.—Reid.

56. An appeal, struck off under Act XXIX. of 1841, cannot be revived except within the time first allowed for appealing from the decree of the Court whose judgment is appealed against. *Goluc Chunder Roy, Petitioner.* 17th April 1843. 1 S. D. A. Sum. Cases, Pt. ii. 48.—Reid.

57. The Sudder Dewanny Adawlut directed a Zillah Judge to readmit, under Act XVI. of 1845, an appeal improperly dismissed by his predecessor in office, under Act XXIX. of 1841. *Pran Kishen Gopt, Petitioner.* 17th Aug. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 82. —Reid.

58. An appeal was re-admitted on the file eleven years and nine months *after* it had been struck off on default, on the special ground that the appeal of other parties, co-defendants, had also, under the special circumstances of the case, been permitted to be revived after having been struck off in the same suit, notwithstanding the lapse of six or seven years. *Surbanund and others* v. *Walida Begum and others.* 28th May 1850. S. D. A. Decis. Beng. 241.—Dick, Jackson, & Colvin.[1]

7. *Default.*

59. One of two appellants having died, and his heir, after appearing, having defaulted, the Zillah Judge struck off the appeal under Act XXIX. of 1841. The Sudder Dewanny Adawlut held that the Judge was bound to hear the appeal on its merits, *quoad* the appellant who had not defaulted. *Ram Chunder Bose, Petitioner.* 3d July 1843. 1 S. D. A. Sum. Cases, Pt. ii. 50.—Reid.

60. The Courts cannot legalise a default by granting retrospective sanction for excess of time. *Rampershad Singh* v. *Gungaram and others.* 8th Nov. 1849. S. D. A. Decis. Beng. 430.—Barlow & Colvin.

61. A default cannot be considered as cured, under Act XVII. of 1847, merely through the omission of the presiding Judge to notice objections distinctly urged against it. *Ibid.*

61*a*. The grounds which Act XVI. of 1845 admits in justification of default cannot be pleaded in appeal from an order of dismissal on default under Act XXIX. of 1841. *Mahomed Kazim and others, Petitioners.* 19th June 1848. 1 S. D. A. Sum. Cases, Pt. ii. 143.—Hawkins.

61*b*. An application under Act

[1] Mr. Colvin, in a note on this decision, remarked—"This is a case in which the appeal was restored to the file eleven years and nine months after it had been struck off by an order of the Court of Oct. 1st, 1833. This re-admission was only by orders in the miscellaneous department. I am of opinion that the legality and propriety of such a revival of an appeal are entirely open to reconsideration by the Court finally passing its judgment on the case, as that Court is responsible, before disposing of property by a decision, for seeing that the appeal is, in all respects, regularly and lawfully before it. Orders in the miscellaneous department are merely temporary and provisional, and have no effect beyond enabling a case to proceed, or to be brought up for determination on all its points."

XVI. of 1845; for the restoration of of an appeal dismissed under Act XXIX. of 1841, should be preferred to the Court where the case was disposed of under the law of default. *Faizoo Pramanick, Petitioner.* 29th July 1850. 3 Sev. Cases, 77.—Colvin.

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8. *Third party.*

61*c*. A third party cannot be debarred from the right of his appeal from a decision in which, although he was a defendant, yet he had taken no part in the compromise entered into by his co-defendants. *Additional Collector of Zillah Chittagong, Petitioner.* 2d Jan. 1849. 2 Sev. Cases, 445.—Hawkins.

62. On the appeal of a third party, an Appellate Court may, under Construction No. 997, alter the original judgment as affecting defendants who had not appealed. *Sheikh Abdoollah* v. *Sheikh Tofail Ali and others.* 12th April 1849. S. D. A. Decis. Beng. 105.—Dick & Colvin. (Barlow dissent.)

62*a*. An *Uzardár* whose claim to property advertised for sale by the Lower Court has been rejected, but without any proof of fraudulent design, may still appeal upon the ground of irregularities in the sale subsequently made; there being no restriction to the right of such appeal under Cl. 2. of Sec. 5. of Reg. VII. of 1825. *Sayyud Jafur Ally, Petitioner.* 20th March 1850. 2 Sev. Cases, 567.—Rattray, Tucker, & Barlow.

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9. *Valuation of Appeal.*

63. The Lower Court having given a decree for a sum less than the amount claimed, the defendant is at liberty to appeal, estimating his appeal at the amount awarded, instead of at that originally claimed. *Lukhenarain Burral, Petitioner.* 14th June 1841. 1 S. D. A. Sum. Cases, Pt. ii. 11.—Reid.

64. In an action for damages, the defendant may appeal from the decree of the Lower Court to the amount of the sum awarded as damages, instead of at the amount of the damages laid by the plaintiff. *Chundee Churn Mookerjea, Petitioner.* 20th Sept. 1841. 1 S. D. A. Sum. Cases, Pt. ii. 18.—Reid.

65. According to the spirit of Construction No. 862, in the event of several separate cultivators desiring to appeal separately from a decree passed against them jointly in the Revenue Courts, each plaintiff should estimate his suit at that portion of the sum claimed in the summary suit which was demandable from himself, not at the whole amount of rent claimed in that suit. *Khobee Singh and others* v. *Gunesh Deen.* 25th June 1849. 4 Decis. N. W. P. 200.—Thompson, Begbie, & Lushington.

66. When a decree is given for possession of land with mesne profits, an appeal to contest the justice of the latter only, on the ground of the appellant's not having dispossessed the claimant, must be valued according to the amount of the mesne profits decreed, and must not include the value of the land also. *Sheebnath Ghose and others* v. *Degumbur Ghose and another.* 20th June 1850. S. D. A. Decis. Beng. 310.—Barlow, Jackson, & Colvin.

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10. *Non-regulation Districts.*

67. Under the orders of Government No. 869, dated the 19th May 1848, the first or regular appeal from cases valued at 10,000 Company's rupees and upwards, which may be heard and determined in all the non-regulation districts, by whatever authority, lies to the Court of Sudder Dewanny Adawlut. *Chowdhree Muhabeer Singh and others* v. *Sheo Purshad Bhuggut.* 5th July 1848. S. D. A. Decis. Beng. 647.—Tucker.

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11. *Appeal by a Pauper.*

68. An appeal in *formâ pauperis* may be preferred from the decision

of a Collector under Cl. 4. of Sec. 30. of Reg. II. of 1819. *Ram Narain Bhuttacharje, Petitioner.* 10th Feb. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 63.—Reid.

68*a*. Refusal of permission to a party to appeal as a pauper under Cl. 3. of Sec. 12. of Reg. XXVIII. of 1814, is final and conclusive, and not open to appeal to the Sudder Dewanny Adawlut. *Puddabutti Debi, Petitioner.* 8th Aug. 1850. 3 Sev. Cases, 25.—Dick,* Barlow, & Colvin.

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12. *Parties.*

69. *A* sued *B*, *C*, and others, and got an *ex parte* decree from the Principal Sudder Ameen's Court. *B* and *C* appealed severally to the Zillah Judge. *B* prosecuted his appeal, which was affirmed on trial, and he preferred a further appeal to the Superior Court. *C* had defaulted, and got his appeal struck off the file of the Zillah Judge, whose order was confirmed on *C*'s summary appeal to the Sudder Dewanny Adawlut, and his subsequent application for the admission of a special appeal was also rejected. On the trial of the merits of *B*'s appeal by the Sudder Dewanny Adawlut, *C* still petitioned to be conjoined as an appellant; and it was held, that *C* could not be heard in the appeal of *B*, inasmuch as he was not a party to such appeal. *Radhakishwur Ray* v. *Arathoon Harrapiet Arathoon.* 17th Jan. 1843. 2 Sev. Cases, 35. —Barlow & Lee Warner.

70. It is irregular in an Appellate Court of its own accord to make parties respondents. *Moulvee Wahajooddeen and another* v. *Hurnarain.* 25th Nov. 1846. 1 Decis. N. W. P. 206.—Thompson, Cartwright, & Begbie.

71. The purchaser of the rights and interests of a party may become an appellant from a decision adverse to such party. *Mohun Lal Thakur and others* v. *Bibi Bhobun and others.* 22d March 1848. S. D. A. Decis. Beng. 215.—Hawkins.

72. It is not necessary for a defendant appealing to make his co-defendants respondents, when they supported the pleas of such defendant in the Lower Court; and a defendant so appealing has a right to raise all questions by which his interests may be affected, though those questions, or any of them, may also concern some of his co-defendants not made parties in the appeal. *Kaleekaunth Lahoree* v. *Kirpomayee Dibbea.* 16th April 1850. S. D. A. Decis. Beng. 113.—Barlow, Colvin, & Dunbar.

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13. *Representation.*

72*a*. The right, title, and interest of an appeal, under preparation for transmission to the Privy Council, being publicly sold in execution of a Zillah decree enforced against the appellants; the purchasers were allowed, on application, to occupy their place, and become the rightful representatives and successors of the right, title, and interest in the appeal case of the original appellants to England. *Daya Mai Debia and others* v. *The Collector of Zillah Bholoa and others.* 27th Dec. 1849. 2 Sev. Cases, 499.—Colvin.

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14. *Practice.*

73. In an appeal from the order of a Zillah Judge for the release, on claim preferred, of property attached by the petitioner in execution of a decree, the Sudder Dewanny Adawlut rejected the application, the objections to the release not having been made in the Zillah Court. *Rani Kummul Komari, Petitioner.* 10th Jan. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 22.—Reid.

74. The Sudder Dewanny Adawlut having, on special appeal, set aside, as incomplete, the decisions of the Principal Sudder Ameen and Zillah Judge (the Courts of first in-

stance and first appeal), and the Judge having then decided the case himself without further reference to the Principal Sudder Ameen; it was held, that the appeal to the Sudder Dewanny Adawlut from his decision must be considered as an appeal from a judgment in an original suit, and admissible as a matter of course. *Chowdree Sahib Singh* v. *Telokdharee Singh*. 6th July 1842. 1 S. D. A. Sum. Cases, Pt. ii. 34.—Tucker & Reid.

75. A case was first tried by the Moonsiff, and the decision confirmed by the Principal Sudder Ameen; the Judge, on special appeal (in 1842), upset both decisions, and sent back the case for re-trial. The Principal Sudder Ameen, instead of returning the case to the Moonsiff, tried it himself. Held, that his decision must be taken as a decision of a Court of first instance, and that consequently the appeal lay regularly to the Judge, and not specially to the Sudder Dewanny Adawlut. *Riayet Ali and another* v. *Peeree Mohun Ghose and others*. 6th June 1846. S. D. A. Decis. Beng. 214.—Reid.

76. It is not competent to an Appellate Court to confirm on its merits a judgment appealed against, without having on the record the objections or reasons of appeal of the appellant. *Neel Kummul Pal Chowdhree, Petitioner*. 13th June 1843. 1 S. D. A. Sum. Cases, Pt. ii. 50.—Reid.

77. A special appeal was admitted on the ground that the decision of the Principal Sudder Ameen declaring a sale to be illegal was opposed to a Construction of the Court. Held, that the decision of the Principal Sudder Ameen must be upheld, as, under Act III. of 1843, the Sudder Dewanny Adawlut is not competent to interfere with what has been established as fact in the Courts below. *Bhog Raj Thakor* v. *Futteh Chund Sahoo*. 17th Feb. 1845. 7 S. D. A. Rep. 191.—Rattray, Barlow, & Gordon.

78. An appellant having wilfully neglected to attend in the Lower Court, cannot be admitted to plead in the Sudder Dewanny Adawlut in defence of what he had there left undefended.[1] *Meer Lootf Ali* v. *Jafur Hosein and others*. 2d Sept. 1845. S. D. A. Decis. Beng. 285.—Rattray.

79. The Sudder Dewanny Adawlut interfered on appeal, and reversed an illegal order made in a case by a Zillah Judge, where, if legal, such order would have been final. *Aladh Munee, Petitioner*. 1st Sept. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 83.—Full Court.

80. Where it appeared on record that the appellant, after filing his answer, never again appeared in the Lower Court, either in person or by pleader, or filed any proofs, although so desired during nearly six months that the suit was pending; it was held, that his objections, for the first time urged in appeal against the respondent's proofs, could not be heard. *Muhesh Chunder Das* v. *Salt Agent on the part of Government*. 15th Dec. 1846. S. D. A. Decis. Beng. 420.—Dick.

81. Appeals should be heard in the presence of the appellants or their *Vakils*. *Tara Munee Debea* v. *Gour Kant Deh and others*. 9th Jan. 1847. S. D. A. Decis. Beng. 5.—Reid.

82. A decision of a Court of first instance cannot be reversed in appeal without summoning the respondent. *Genda Lal* v. *Degumber Purshaud and others*. 23d March 1848. S. D. A. Decis. 219.—Tucker.

83. An appeal should not be decided against a respondent in his absence. *Ponah Mussulman and another* v. *Pooah Boro Mussulman*. 12th Sept. 1848. S. D. A. Decis. Beng. 811.—Tucker.

84. When, in appeal, a person is

[1] See Circular Order No. 141 of the 12th March 1841.

brought into Court as a respondent, it is not necessary for him to prefer a separate appeal. *Sheikh Afzul and others* v. *Dhurnee Dhur Chuckerbuttee and others.* 16th Jan. 1847. S. D. A. Decis. Beng. 11.—Tucker.

85. A plea that a peculiar form of marriage affected the inheritance claimed in the suit was rejected by the Sudder Dewanny Adawlut because it had not been advanced in the Lower Court.[1] *Rughobur Suhaee* v. *Mt. Tulashee Kowur and others.* 22d March 1847. S. D. A. Decis. Beng. 87.—Rattray, Dick, & Jackson.

86. Held, by the Sudder Dewanny Adawlut, in a suit for succession to an estate, that the illegitimacy of a claimant could not be urged in the Appellate Court as conferring a title, on disproof of his legitimacy, alone pleaded in support of it in the Lower Court.[2] *Chowtreea Run Murdum Sein* v. *Sahib Perhlad Sein.* 26th May 1847. 7 S. D. A. Rep. 292.—Rattray, Tucker, & Barlow.

87. In an appeal from a judgment of nonsuit, the Appellate Court should determine the propriety, or otherwise, of such an order, and not decide upon the merits of the claim, which involves the assumption of original jurisdiction.[3] *Sunkurree Dassea* v. *Pertab Chunder Rae and others.* 19th Aug. 1847. 7 S. D. A. Rep. 385.—Hawkins. *Mt. Oomdutonissa Bibi and others* v. *Ram Hurree Mundul.* 9th Aug. 1847. S. D. A. Decis. Beng. 410.—Tucker. *Holas Singh* v. *Sumrun Raee and another.* 20th May 1848. S. D. A. Decis. Beng. 469.—Rattray. *Sheikh Manollah Mistree* v. *Gudadhur Dooloree and others.* 31st May 1848. S. D. A. Decis. Beng. 485.—Barlow.

88. When an Appellate Court sets aside an order of nonsuit it should not enter into the merits of the case. *Sheikh Sudderudee* v. *Ranee Kutteeannee and another.* 26th April 1849. S. D. A. Decis. Beng. 128.—Jackson.

89. If the Appellate Court be of opinion that the Lower Court ought to have passed an order of nonsuit, the Appellate Court should itself pass such order, and not decide the case upon its merits. *Horil Das and another* v. *Bhuwuns Geer and others.* 4th April 1848. S. D. A. Decis. Beng. 283.—Rattray.

90. Objections urged in the Appellate Court, as to irregularity of procedure, should be determined prior to adjudicating on the merits of the case. *Adjoodheapershad and others* v. *Nuwaub Asgar Ali Khan.* 9th March 1848. 3 Decis. N. W. P. 78.—Cartwright.

91. A plaintiff having been nonsuited by the Court of first instance, the Appellate Court is bound to confine itself to the correctness, or otherwise, of the order of nonsuit, without taking any notice of the proofs put in by the plaintiff. *Nuthun and others* v. *Oosman Khan.* 23d Sept. 1848. 3 Decis. N. W. P. 369.—Tayler, Thompson, & Cartwright.

92. Whenever a case has been disposed of by a Court of first instance without an investigation of its merits, it is not competent to a Court of second instance to enter for the first time into those merits, and to give judgment upon them. *Roop Chund* v. *Poorun Chund.* 14th July 1846. 1 Decis. N. W. P. 77.—Thompson, Cartwright, & Begbie. *Ram Doss and another* v. *Ahmud Hussun.* 6th May 1847. 2 Decis. N. W. P. 117.—Begbie. *Baboo Dowlut*

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[1] In this case Mr. Dick observed that he concurred in rejecting the plea raised as to the form of marriage, because it was a *special* plea, and the fact on which it rested not having been unequivocally asserted, nor a particle of proof adduced of its truth. He added, "I would not reject a *general* plea, founded on Hindú or Mahomedan law, merely because it had not been urged in the Court of first instance."

[2] And see *supra*, Pl. 23.

[3] See the Circular Order No. 46 of the 23d Aug. 1839.

Singh v. *Mehabullee Singh.* 14th June 1847. 2 Decis. N. W. P. 177. —Lushington. *Shere Ali and others* v. *Imam Ali and others.* 27th March 1849. 4 Decis. N. W. P. 67.—Tayler, Thompson, & Cartwright.

93. An order for the *dismissal* of an appeal, and the *reversal* of the decree of the Lower Court, involves a manifest inconsistency, and cannot be acted upon. *Ram Lochun Hoom and others* v. *Modh Nurain Hoom and others.* 23d Sept. 1847. S. D. A. Decis. Beng. 568.—Hawkins.

94. A case should be so decided as to admit of an appeal generally, rather than in such a form as to leave it open on one point while the rest of the case was still under investigation in another Court. *Mohummud Buxsh* v. *Kirpa Maye Dassee.* 19th Feb. 1848. S. D. A. Decis. Beng. 95. —Tucker, Barlow, & Hawkins.

95. An appellant, resting his case on the proceedings of the Lower Court, is entitled to have his appeal disposed of on the record. *Jugmohun Mullik* v. *Bholanath Buttacharj and others.* 8th March 1848. 7 S. D. A. Rep. 445.—Tucker.

96. *A* sued *B* and *C* for a balance due on bond, in the Moonsiff's Court; *B* and *C* acknowledged the receipt of notice, but did not appear, and an *ex parte* decree was passed, and *C*'s property sold in execution. *B* objected to the sale, alleging that *C* had given him her property; but the Moonsiff rejected his petition. *B* appealed to the Judge more than ten months after the *ex parte* decree, who reversed the Moonsiff's order, instructing him to appeal against the Moonsiff's decision in one month. This being done, the case was made over to the additional Principal Sudder Ameen, who, by permission of the Judge, sent it back to the above-mentioned Moonsiff for re-trial. The Moonsiff dismissed the plaint, and his order was confirmed by the Judge. Held, that as it appeared that *A* did not appeal from the Judge's order instructing *B* to appeal, and ultimately remanding the case for re-trial by the Moonsiff, but, on the contrary, appeared in the Lower Courts, in which the case had since been disposed of on its merits, the defects, whatever they might be, in the proceedings of the Lower Court, were cured. *Deybee Pershad* v. *Madhub Patuk and others.* 4th April 1848. 7 S. D. A. Rep. 479.—Tucker, Barlow, & Hawkins.

97. Where both parties appeal from a decision both appeals should be tried by the same authority, and ought not to be referred by the Zillah Judge to different authorities. *Soobna Surma* v. *Jeodutt Surma.* 20th June 1848. S. D. A. Decis. Beng. 557.—Hawkins.

98. It is contrary to the practice of the Courts to exonerate co-defendants withdrawing from an appeal. *Chundur Dut Singh and others* v. *Howree Misr and others.* 1st July 1848. S. D. A. Decis. Beng. 625. —Tucker, Barlow, and Hawkins.

99. An appeal from the decision of a Principal Sudder Ameen, tried in the first instance by him as *ex officio* Sudder Ameen, should be disposed of by the Zillah Judge, and not by his successor in the office of Principal Sudder Ameen. *Sheonath Singh* v. *Sheikh Hadi Ali.* 22d July 1848. 7 S. D. A. Rep. 526.—Tucker, Barlow, & Hawkins.

99 *a.* Supplementary reasons of appeal may be filed in a pending appeal case in the Sudder Dewanny Adawlut, with the express permission of the Court. *Reed* v. *Rammohan Mullick.* 26th July 1848. 2 Sev. Cases, 495.—Hawkins.

100. The defendant, a *Zámíndár*, sued the plaintiffs, cultivators, jointly in the Revenue Courts, for balances of rent, and obtained a decree against them. The plaintiffs appealed *jointly* to reverse the decree. Held, that under Construction No. 860 the plaintiffs were bound, in such appeal, to sue *separately*. *Khobee Singh and others* v. *Gûnesh Deen.* 25th

June 1849. 4 Decis. N. W. P. 200. —Thompson, Begbie, & Lushington.

101. It is not competent to a respondent to raise any question on the appeal not involved in the appeal itself, on the points on which it may have been brought by the appellant. It is in this sense that the Courts will apply Construction No. 868. *Macpherson* v. *Khajah Gabriel Avietick Ter Stephanoos.* 21st June 1848. 7 S. D. A. Rep. 514. —Dick, Jackson, & Hawkins. *Raj Mohun Raee* v. *Gopee Mohun Raee and another.* 28th June 1849. S. D. A. Decis. Beng. 260.—Colvin. *Baboo Hurkoomar Thakoor* v. *Rutneshwur Dey.* 14th March 1850. S. D. A. Decis. Beng. 53.—Dick, Barlow, & Colvin. *Chand Khan* v. *Belukkhuna Bibi.* 8th April 1850. S. D. A. Decis. Beng. 105. —Jackson, Colvin, & Dunbar. *Beejye Gobind Bural* v. *Kallee Dass Dhur and others.* 10th June 1850. S. D. A. Decis. Beng. 279.—Barlow, Jackson, and Colvin. *Sumbhoo Chundur Ghose* v. *Sreeram Banerjee and others.* 20th Dec. 1850. S. D. A. Decis. Beng. 598.—Dick, Barlow, and Colvin.

102. Where the Judge had decreed to a single appellant (who was but one out of four plaintiffs, each claiming separate portions of an estate) the whole of the property sued for, the other plaintiffs not being parties to the appeal; it was held, that the law, as laid down in par. 3 of the Court's letter dated the 2d Jan. 1836, Construction No. 997, must be looked upon as sanctioning such proceeding, and leaving it open to the Appellate Court to extend its jurisdiction to all the interests affected in the decree of the Lower Court, in which must of course be included the interest of those plaintiffs who were not actual participators in the appeal to the Judge. *Mt. Rookmun and another* v. *Beharee Panrey and others.* 28th March 1849. 4 Decis. N. W. P. 70.—Tayler, Thompson, and Cartwright.

103. By Construction No. 997, the Civil Courts are, *as a general rule,* "to confine themselves to the decision of the objections to the decree made by the parties who appeal; but, when obviously requisite for the ends of justice, the jurisdiction of the Appellate Court may extend to all the interests affected by the decree." It was held, however, that whenever the Courts deem it expedient to avail themselves of this discretion, a special declaration of the necessity for their doing so should be recorded. *Becha Lall* v. *Cheda and others.* 25th June 1849. 4 Decis. N. W. P. 196.—Thompson, Begbie, & Lushington. *Emamooddeen Khan* v. *Telok Singh and others.* 8th July 1850. 5 Decis. N. W. P. 157.—Begbie, Deane, & Brown.

104. *A* having instituted a suit, and filed an appeal upon it as *Näib,* or deputy of *B,* and *B* having subsequently applied to be admitted as appellant in his own name, on the ground that he had dismissed *A* from his service, and having then prayed that the appeal might be struck off, permission was given for its being struck off (all costs of the appeal being charged to *B*'s estate), but so as not to injure the rights of other parties alleging themselves to be partners of *B* in the transaction, or the claims of inheritance in any persons desiring to be recognised as heirs of *B* who had intermediately deceased. *Kishob Singh and another* v. *Bidyanund Singh.* 18th March 1850. S. D. A. Decis. Beng. 57. —Barlow, Colvin, & Dunbar.

15. *Special Appeal.*

(*a*) *When allowed.*

105. Six different actions having been instituted, for as many villages, to set aside a single deed of conveyance of the whole, and having been decided together by the Courts of original jurisdiction and first appeal, the Sudder Dewanny Adawlut, under the circumstances, allowed the cases

to be consolidated, and admitted one special appeal from the six decrees. *Russik Lal Dutt, Petitioner.* 3d June 1835. 1 S. D. A. Sum. Cases, Pt. i. 8.—Rattray & D. C. Smyth. (Braddon dissent.)

106. Where a Principal Sudder Ameen reversed the decision of a Lower Court turning upon a settlement of lands, on the ground that such settlement was contrary to certain Circular Orders of the Board of Revenue, which Orders, however, had not been filed by either party, the proceeding was held to be illegal, and a special appeal was admitted, and the case returned to be disposed of independently or in connexion with the Orders cited. If the latter, however, the Orders alluded to were to be before the Court, and filed with the record. *Baboo Ram Lochun Singh* v. *Hyder Ali Khan.* 12th March 1845. S. D. A. Decis. Beng. 51.—Rattray.

107. It is contrary to the practice of the Courts to issue any order in appeal to the prejudice of a party not before the Court; and where this had been done, a special appeal was admitted. *Maharajah Mahtab Chunder Behadoor* v. *Peearea Mohun Roy and others.* 27th Dec. 1845. S. D. A. Decis. Beng. 486.—Tucker, Reid, & Barlow.

108. *A* sued, as adopted son of *B*, to recover a sum of money due on bond from a third party, who did not appear to defend the suit. *C* and *D*, however, put in several claims denying *A*'s right to sue as heir of *B*. The Moonsiff and the Judge refused to hear *A* until he had regularly proved himself the adopted son of *B*. A special appeal was admitted by the Sudder Dewanny Adawlut, and the case sent back with directions that the Moonsiff should decide summarily between *A* and *C* and *D*, and allow the successful party to proceed according to law. *Kishen Lal Kuttur-yar Gyawal* v. *Byjoo Koormee.* 13th June 1846. S. D. A. Decis. Beng. 222.—Tucker, Reid, and Barlow.

109. A special appeal was admitted on a ground not specifically urged in the petition of appeal, where the objection made to its admission was merely made to the award generally of interest; as the account in detail not having been furnished in the decree, a definite plea could not be made against what was not there exhibited, and the account being produced in Court at the hearing of the petition. *Bhechuk Singh and others* v. *She Suhaee and others.* 21st June 1847. S. D. A. Decis. Beng. 276. —Rattray, Dick, & Jackson.

110. False reasoning may perhaps be admitted as a ground of special appeal, but not the supposed inconclusiveness of the grounds upon which the Lower Courts have come to a decision. *Sookhnundun Tewaree* v. *Kishunpershad.* 9th Aug. 1847. 2 Decis. N. W. P. 235.—Tayler, Begbie, & Lushington.

111. In one of two suits for the recovery of rent of land occupied by houses, the lands being situated in different villages, the Judge, finding that a custom prevailed in the village for the payment of some consideration to the *Zamíndár*, decreed in favour of the *Zamíndár:* in the other suit, the Judge, considering that no such custom was proved in that village, decreed against the *Zamíndár*. Held, by the majority of the Court, that the cases thus decided, being founded upon similar causes of action, and the decisions of the Judge being diametrically opposed, such decisions were therefore inconsistent with each other, and a special appeal would lie from the latter decision under Cl. 1. of Sec. 7. of Reg. XIX. of 1817. *Baboo Rampershun Singh* v. *Hurnam Singh and another.* 23d Aug. 1848. 3 Decis. N. W. P. 291. — Thompson & Cartwright. (Tayler dissent.)[1]

111 *a*. But it was afterwards held by the majority of the Court, that the fact of two suits being founded

[1] Mr. Tayler thought that the two suits, though of a *similar description*, could not

on a similar cause of action was quite immaterial, and not sufficient of itself to justify the admission of a special appeal, the point being the *inconsistency* of the judgments, not the similarity of the causes of action, and there being nothing in the wording of Cl. 1. of Sec. 7. of Reg. XIX. of 1817, to support the supposition that suits founded on a similar cause of action must be inconsistent when they happen to differ.[1] *Muttra Pershad Pandey and others* v. *Ruggoo.* 13th June 1849. 4 Decis. N. W. P. 154.—Begbie & Lushington. (Thompson dissent.)

112. Where a party sued to recover Rs. 300 on a document executed in his favour by the defendants to induce him to refrain from appealing against a decree passed in an original suit, the Sudder Ameen and the Civil Judge dismissed his claim, on the ground that the document was an illegal and invalid instrument. From these decisions the Sudder Adawlut admitted a special appeal, as the grounds on which the decrees of the Lower Courts were founded involved a question of general interest which it was expedient that the Sudder Adawlut should decide. *Vengapien* v. *Nanoovien and another.* 9th Aug. 1849. S. A. Decis. Mad. 39.—Thompson & Morehead.

113. Where the Court of first instance had selected and tried the right issues, but the Lower Appellate Court had disposed of the case on wrong issues, the Sudder Dewanny Adawlut admitted a special appeal. *Muddun Mohun Dey* v. *Kishen Soonder Das.* 16th Aug. 1849. S. D. A. Decis. Beng. 349.—Dick, Barlow, & Colvin.

114. A special appeal was admitted by the Sudder Adawlut where it appeared that one of the principal documents in the case, and one, indeed, on which the whole merits thereof mainly depended, had not received the consideration of the Lower Courts. *Vencataragava Charry* v. *Veerasawmy Moodely and another.* 20th Aug. 1849. S. A. Decis. Mad. 41. — Morehead.

115. Where parties claimed certain property under a will, and their claim was dismissed by the Civil Judge chiefly on the ground of the will not having been produced, the Sudder Adawlut admitted a special appeal, and remanded the case for review of judgment, it appearing doubtful whether the claimants were not entitled to the property under litigation under the law of inheritance, and the usage of their Cast. *Padayen Packoomar and another* v. *Vayell Moilotoo Patooma and others.* 22d Oct. 1849. S. A. Decis. Mad. 79.—Hooper.

116. A special appeal will be admitted to try the right construction of a deed differently construed by the Principal Sudder Ameen and the Judge. *Goytree Dibbea* v. *Suroop Chunder Sircar and others.* 20th Dec. 1849. S. D. A. Decis. Beng. 479. — Barlow, Colvin, & Dunbar.

(*b*) *When disallowed.*

117. A special appeal is inadmissible if preferred to reverse an error

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be considered as founded on a *similar cause of action*. He also observed, "Although the majority of the Court has declared them to be suits founded on similar causes of action, still the judgments are not inconsistent with each other. In one suit, the Judge declares that a custom prevails in the village for the payment of some consideration to the Zamindár, whilst in the other suit no such custom has been ascertained to exist in the village: the facts are therefore different, and the judgments must necessarily be different; but they are not, therefore, opposed to, or inconsistent with each other." He would therefore have dismissed the appeal.

[1] The circumstances of this special appeal, and the decisions on which it was founded, were precisely similar to that in *Baboo Rampershun Singh's* case; and it was, indeed, recorded in the certificate that the appeal was admitted solely with reference to the decision in that case. The majority of the Court dismissed the appeal, in accordance with the view taken by Mr. Tayler, as quoted in the preceding note.

in the determination of the facts of a case, which, according to Sec. 2. of Reg. XXVI. of 1814, must be assumed to be as stated in the decree appealed against.[1] *Ameenoollah, Petitioner,* 30th Nov. 1842. 2 Sev. Cases, 29.—Tucker & Reid.

118. A special appeal cannot be admitted to reverse an error in the determination of facts, although the judgment of the Lower Court be manifestly without, or contrary to, evidence.[2] *Rickhee Lall* v. *Meer Shurrufooddeen and others.* 30th March 1847. 2 Decis. N. W. P. 76.—Thompson & Cartwright.

119. Where three out of four reasons for the decree of a Lower Court were bad, but the fourth was based on a finding of facts sufficient to support the judgment, such judgment cannot be interfered with on special appeal. *Fukeeroodeen Mohummud* v. *Bugwuttee Dassea and others.* 1st Sept. 1847. S. D. A. Decis. Beng. 497.—Dick, Jackson, & Hawkins.

120. Application for a special appeal was rejected, notwithstanding the illegality of the Judge's order appealed against; such illegality not affecting the final disposal of the case. *Beer Nursing Mullik and others, Petitioners.* 22d April 1848. 1 S. D. A. Sum. Cases, Pt. ii. 138. —Tucker, Barlow, & Hawkins.

121. The summary decision of a Lower Appellate Court, in a question of fact, is not open to a special appeal.[3] *Mohunt Nuraen Doss, Petitioner.* 19th June 1848. 1 S. D. A. Sum. Cases, Pt. ii. 142. —Hawkins.

122. A special appeal will not lie from a mere order of remand by a Lower Court, such an order not amounting to a judgment that can be called in question by a special appellant. *Shahid Buksh* v. *Bukhtawur Singh and others.* 30th Aug. 1848. 3 Decis. N. W. P. 311.—Tayler, Thompson, & Cartwright.

122*a*. No appeal now lies to the Sudder Dewanny Adawlut from an interlocutory order, passed in a regular suit by a Moonsiff, which may have been either reversed or affirmed in a summary appeal by the Zillah Judge.[4] *Piarimohan Kanoongo and others, Petitioners.* 23d Sept. 1848. 2 Sev. Cases, 367.—Hawkins.

123. A new ground of claim, not urged in the Lower Courts, cannot be maintained in special appeal. *Ghur Bhurn Jhah* v. *Soophul Misser and others.* 28th June 1849. S. D. A. Decis. Beng. 253.—Dick, Barlow, & Colvin.

124. Where a special appeal had been admitted on the ground that "the decree of the acting subordinate Judge, which confirmed the decree of the Moonsiff, was clearly against the evidence;" the Sudder Adawlut held, that the admission of a special appeal on such certificate was incorrect.[5] *Darebyle Ramiah* v. *Chennuppoo and another.* 21st July 1849. S. A. Decis. Mad. 35. —Hooper, Thompson, & Morehead.

125. To terminate a discussion arising out of certain returns from a Civil Judge is not a legal ground for the admission of a special appeal; nor can a special or second appeal be entertained to determine whether

[1] See Construction No. 246, Vol. I.
[2] Construction No. 246.
[3] See resolution of the Sudder Dewanny Adawlut, dated 12th Dec. 1845.

[4] By Sec. 5. of Act VI. of 1843, all summary appeals from the orders of Moonsiffs or Sudder Ameens, in execution of their decrees, to the Zillah or City Judges, or Principal Sudder Ameen, as the case may be, are final, and are not specially applicable to the Sudder Dewanny Adawlut.
[5] In this case the Court observed—"The law requires that all the facts of the case must be assumed as stated in the decree; and the Court of Sudder Adawlut are of opinion, that, as ruled by the Sudder Dewanny Adawlut in Calcutta and the northwestern provinces, a special appeal cannot be admitted to reverse an error in the determination of facts, where even the judgment may appear manifestly without, or contrary to, evidence." See Construction No. 246, dated the 1st May 1846.

the evidence regarding the payment of certain monies has been properly appreciated by the Lower Court, or not. *Chetumbra Oodian* v. *Kristniah.* 30th July 1849. S. A. Decis. Mad. 33.—Thompson.

126. Where a Civil Judge at first rejected a petition of appeal, on the ground of delay in preferring it, and subsequently admitted such appeal on the parties accounting satisfactorily for the delay, and adjudicated therein; it was held, by the Sudder Adawlut, that there was no ground for the admission of a special appeal to that Court, as the appeal, though rejected by the Civil Judge in the first instance, was, on the parties shewing cause for their delay in preferring it, legally admissible by him, under the provisions of Cl. 4. of Sec. 12. of Reg. IV. of 1802. *Cattoy Ummal* v. *Chinnatombe Oodian and others.* 2d Aug. 1849. S. A. Decis. Mad. 36.—Hooper & Morehead.

127. A supplemental plaint, irregularly admitted, being superfluous, will be rejected as such, and forms no ground for a special appeal. *Muha Rájah Het Nurain Singh* v. *Lala Khurugjeet Singh.* 16th Aug. 1849. S. D. A. Decis. Beng. 352. —Dick, Barlow, & Colvin.

128. In a suit for a share of profits in a joint transaction founded on an adjustment of accounts, one of the plaintiff's witnesses stated that he had struck the balance of accounts at his own shop, whilst the defendant declared that such witness had no shop at the time in the place mentioned by him, and offered to let the issue of the suit turn on that fact: both parties then entered into an agreement binding themselves to abide by the result of an inquiry to be made on this point. Held, that the Moonsiff was authorised to accept the terms of the voluntary agreement by the parties, and to decide in conformity therewith; and that a ré-investigation of the case, not on its merits, but on the fact of the existence, or otherwise, of the shop, could not be allowed in special appeal. *Maundaun* v. *Ruddoo.* 14th Feb. 1850. 5 Decis. N. W. P. 36.—Tayler, Begbie, & Lushington.

129. A customary right to be summoned on all marriages, and to receive, when so summoned, a *Pán-batta*, or present of *Pán*, from members of a particular community, is not of the nature of an usage having the force of law, to which the Act in regard to special appeals has reference. *Ram Guttree Biswas and others* v. *Mahadeo Bunnick and others.* 21st March 1850. S. D. A. Decis. Beng. 64.—Barlow & Colvin. (Dick dissent.)

130. A decision resting wholly on a belief in evidence cannot be interfered with in special appeal. *Meer Bubur Ali* v. *Syud Kuramut Ali.* 2d May 1850. S. D. A. Decis. Beng. 170.—Dick, Jackson, & Colvin.

130 *a.* A special appeal is not admissible on the facts and merits of a case. *Gurdial Singh, Petitioner.* 23d Sept. 1850. 3 Sev. Cases, 59.—Jackson & Colvin.

(c) *Certificate.*

131. Certificates, admitting special appeals, requiring amendment are to be amended by the Judges before whom the case was pending for decision. *Hurree Mohun Das and others* v. *Pran Kishen Rae.* 18th Aug. 1847. 7 S. D. A. Rep. 384. —Court at large.

132. The point or points certified for the admission of a special appeal, as required by Act III. of 1843, must be contained in the petition of the special appellant; and in deciding that appeal, no regard can be paid to others. *Ramchunder Bhutt Bin Vittul Bhutt* v. *Trimbuck Bhutt Bin Abba Bhutt and another.* 22d Feb. 1848.—Bellasis, 84.—Le Geyt.

133. A certificate having been granted to try whether a decree could

be given for rent-free land, upon a *Sanad* declared to be "spurious," as no such expression was found in the decisions of the Lower Courts, the latter were upheld. *Joy Kishen Mookerjee and another* v. *Nursing Chundur Raee and others.* 21st June 1849. S. D. A. Decis. Beng. 245.—Dick, Barlow, & Colvin.

134. The certificate of special appeal must be definitive, and it is not sufficient if it rest merely on the ground of a general objection to the whole judgment as open to doubt and suspicion.[1] *Boondhee Jha and another* v. *Casserat.* 26th July 1849. S. D. A. Decis. Beng. 304. —Dick, Barlow, and Colvin.

135. When the special ground of appeal has been incorrectly and incompletely certified, the Court may amend the certificate. *Hurree Mohun Das and others* v. *Pran Kishen Raee.* 10th Aug. 1847. 7 S.D.A. Rep. 384.—Dick, Jackson, & Hawkins. *Gourdass Byragee and another* v. *Annund Mohun Chuckerbutty and others.* 8th Nov. 1849. S. D. A. Decis. Beng. 428.—Dick, Barlow, & Colvin. *Pran Kishen Pal* v. *Khooderam Raee and others.* 6th Dec. 1849. S. D. A. Decis. Beng. 436.—Dick, Barlow, & Colvin.

136. The decision of a Judge resting on a supposed *forfeiture* of right to redeem a mortgage, in consequence of the applicant not having sued within one year from the date of foreclosure, cannot be reviewed in special appeal upon a certificate which raises only the question of bringing forward a suit *for hearing* within twelve years from the date of the cause of action. *Muddun Gopal* v. *Rukhnee Raee and others.* 6th Dec. 1849. S. D. A. Decis. 438. —Barlow, Colvin, & Dunbar.

137. Where the certificate of special appeal raised only a question of fact, in doubt of the correctness of the decision of the Lower Court; it was held, that such point could not be tried specially. *Dwarkanath Chatterjee and others* v. *Moteelal Sheel.* 20th Dec. 1849. S. D. A. Decis. Beng. 475.—Barlow, Colvin, & Dunbar.

138. A special appeal cannot be tried upon a certificate not shewing upon what particular point, coming within the provisions of Act III. of 1843, the certificate has been admitted. *Asanath Tewaree and others* v. *Purshad Tewaree and another.* 3d Jan. 1850. S. D. A. Decis. Beng. 4.—Barlow, Colvin, & Dunbar. *Raj Komar Singh and others* v. *Ramsurn Singh.* 31st Jan. 1850. S. D. A. Decis. Beng. 14.—Barlow, Colvin, and Dunbar.

(*d*) *Dismissal.*

139. Omission to state distinctly the specific ground or grounds in the petition on which a special appeal is solicited, subjects the appeal to be taken off the file.[2] *Goorsahay and another, Petitioners.* 13th July 1842. 2 Sev. Cases, 15.—Tucker & Reid.

140. A special appeal to the Sudder Dewanny Adawlut was dismissed because admitted on ground not set forth in the petition of special appeal. *Mohumud Bukhtawur and others* v. *Mohumud Munowur.* 24th Feb. 1847. S. D. A. Decis. Beng. 63.—Reid, Dick, & Jackson.

141. A special appeal on a point of law was dismissed, after admission, it appearing that the Lower Courts had proceeded on the evidence, and dismissed the claim for want of proof. *Gungapurshad Ghose* v. *Joychand Paul Chowdhree.* 8th July 1848. S. D. A. Decis. Beng. 656.—Tucker, Barlow, & Hawkins.

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[1] But the certificate was amended in this case by striking out the general objection, there being other distinct grounds set forth in the certificate.

[2] See Construction 248, Vol. I.

(e) Time.

142. Held, that the period for preferring a special appeal to the Sudder Dewanny Adawlut is three calendar months. But the Court will admit an appeal after that time, provided the petitioner can shew just and reasonable cause to their satisfaction for not having preferred it within the period limited. *Raynundlal, Petitioner.* 15th Dec. 1841. 2 Sev. Cases, 17.—Tucker & Reid.

143. A mere application for permission to lodge a special appeal in the Sudder Dewanny Adawlut, presented within three months from the date of the decree of the Zillah Court, is not sufficient to bring the applicant within the time. *Gour Sehai and others* v. *Hunooman Pursad.* 13th July 1842. 1 S. D. A. Sum. Cases, Pt. ii. 34.—Tucker & Reid.

144. Failure to state the grounds of appeal within the same period, without good cause for the neglect, subjects the application to be struck off the file. *Ibid.*

145. The fact of a case having been tried *ex parte* in the Lower Court forms no ground for admitting the defaulter to appeal after the expiration of the prescribed period.[1] *Jogul Nath Puramanik, Petitioner.* 19th July 1842. 1 S. D. A. Sum. Cases, Pt. ii. 35.—Reid.

(f) Decree.

146. A judgment under the special appeal law can be given only on a point relating to the merits of the decisions of the Lower Courts, and not as to the mode of dealing with such decisions under particular circumstances. *Rooknee Kunth Sein and others* v. *Moheeooddeen Mohummud and others.* 12th July 1849. S. D. A. Decis. Beng. 288.—Dick, Barlow, & Colvin.

(g) Parties.

147. Where the special appellants had omitted to name and indicate as respondents two persons, on whose appeal to the Principal Sudder Ameen the decision of the Sudder Ameen in favour of the present appellants had been reversed; it was held, that the petition of appeal was incomplete under the Circular Order No. 211 of the 1st July 1842, and therefore inadmissible. *Sheb Churn Surma Gungolee and another* v. *Kummul Sircar and others.* 9th July 1846. S. D. A. Decis. Beng. 272.—Tucker, Reid, & Barlow.

(h) Practice.

148. An application to review the order rejecting the admission of a special appeal must be preferred within three months of the rejection, unless the party preferring the same be able to shew just and reasonable cause to the satisfaction of the Court for not having preferred such petition of review within the period above mentioned.[2] *Prem Singh, Petitioner.* 3d Aug. 1842. 2 Sev. Cases, 7.—Tucker & Reid. *Wise, Petitioner. Ibid.*

149. The appeal from a decision affirmed on a re-trial by the Zillah Judge must be specially preferred to the Sudder Dewanny Adawlut. *Mahadev Dutt* v. *Bolake Lal and another.* 3d Aug. 1842. 2 Sev. Cases, 5.—Reid & Tucker. *Dabeepershaud* v. *Purtab Singh.* 28th Sept. 1842.—Reid & Tucker.

150. The opinion of a *Vakíl* should contain the specific ground or grounds on which the admission of a special appeal is solicited. *Dheer Sing and others, Petitioners.* 16th Nov. 1842. 2 Sev. Cases, 27.—Reid & Tucker.

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[1] See Circular Order No. 141, dated 12th March 1841.

[2] See Construction 490, Vol. I. A petition of special appeal until admitted, is viewed as a miscellaneous petition (Construction 1138, Vol. III.), and the spirit of Cl. 2. of Sec. 4. of Reg. XXVI. of 1814, is held to be applicable to miscellaneous cases and summary suits. Constructions 1249, Vol. III. and 216, Vol. I.—Sevestre.

151. Held, that every application for the admission of a special appeal under Act III. of 1843 must be accompanied by copies of the several decrees previously passed on the case appealed against to the Sudder Dewanny Adawlut. *Laulchund Ghose, Petitioner.* 18th June 1845. 2 Sev. Cases, 165.—Tucker, Reid, & Barlow.

152. A special appellant cannot, in the Sudder Dewanny Adawlut, claim a right to plead, as a ground of special appeal, that which was never advanced in his pleading before the Lower Courts. *Rickhee Lall* v. *Meer Shurrufooddeen and others.* 30th March 1847. 2 Decis. N. W. P. 76.—Thompson & Cartwright. *Kanoo Ram* v. *Deokeenundun and another.* 19th May 1847. 2 Decis. N. W. P. 140.—Taylor & Lushington. (Begbie dissent.)[1]

152*a*. The Sudder Dewanny Adawlut will not, on a special appeal, interfere with the orders of the Zillah Judge passed in affirmation of those of a Principal Sudder Ameen of the district in disputed matters of fact arising out of the execution of decrees disposed of by the Lower Courts on a reference to a decretal order of such a Court.[2] *Mahantnarayn Das, Petitioner.* 19th June 1848. 2 Sev. Cases, 417.—Hawkins.

153. A special appeal was admitted on the part of the plaintiff under Cl. 1. of Sec. 7. of Reg. XIX. of 1817, it appearing that the Judge had given inconsistent judgments in cases which were founded upon similar causes of action. Held, that under such circumstances it becomes the duty of the Sudder Dewanny Adawlut to follow one or other of the two courses of procedure laid down in Cl. 2. of Sec. 7. of Reg. XIX. of 1817; that is to say, either to proceed at once to try the merits of all the cases that are before the Court in special appeal, or to remand them to the Judge. *Baboo Rampershun Singh* v. *Hurnam Singh and another.* 23d Aug. 1848. 3 Decis. N. W. P. 291. Thompson & Cartwright. (Tayler dissent.)[3]

154. The Lower Court having decided that an error in date was merely a clerical error, such decision was held to be on a point of fact, and intangible in special appeal. *Sheodyal Singh* v. *Sheo Sehai Singh and others.* 5th April 1849. S. D. A. Decis. Beng. 101.—Dick, Barlow, & Colvin.

155. Where the Court of first instance and the Lower Appellate Court are at issue with regard to the merits of the case, the Sudder Dewanny Adawlut, on special appeal, are bound, under the law, to take the facts

[1] In this case the majority of the Court observed, that although, in particular cases, special appeals had been admitted on grounds not brought forward in the Lower Courts, yet the opposite practice had been generally observed.

[2] See Resolution, 12th Dec. 1845, and Construction No. 246.

[3] In this case the Court proceeded to remark on the merits of the cases, and decided accordingly. Mr. Tayler considered that the Court could not proceed to try the suit before them on its merits, and remarked — "They must first determine which of the conflicting judgments should be upheld, 'it is competent to the Court to try the suit on its merits, or to remand it' if they determine to uphold the principle of the decision filed as an exhibit; but it is not incumbent on them to do one or the other. Cl. 1. Sec. 7. Reg. XIX. of 1817, in no way alters the provisions of Cl. 2. Sec. 2. Reg. XXVI. of 1814: it permits other grounds of special appeal, but, under the same restriction in regard to the facts found, they must be assumed by this Court in considering whether the judgments are conflicting. The Court having resolved to uphold the principle laid down in the exhibit, which the appellant may produce as opposed to his decree, might then try the suit on its merits. If the decree appealed against lays down the correct principle of law, it must be upheld intact: the law gives the Court no power to try the facts of a suit in special appeal, except when it becomes necessary to reverse the same, in order to make the judgments in appeal correspond with the judgment filed as an exhibit by the appellant, the principle of which the Court have determined to uphold."

as found by the Lower Appellate Court. *Bhuwanee Tuhul Singh* v. *Mt. Omutoolbutool.* 11th June 1850. 5 Decis. N. W. P. 114.—Begbie, Deane, & Browne.

156. Held, that a special summary appeal must be accompanied by attested copies of both the several orders, previously passed by the Courts below, on the case appealed against to the Sudder Dewanny Adawlut.[1] *Sheodeal, Petitioner.* 2d April 1850. 2 Sev. Cases, 539.—Dick.

157. A defect, or irregularity of procedure, occurring previously to the admission of an application for special appeal, cannot be noticed by the Court trying the special appeal after admission upon a certificate. *Girwur Nurain Singh and others* v. *Motee Lal and others.* 4th April 1850. S. D. A. Decis. Beng. 99.—Dick, Barlow, & Colvin. *Hukeem Abool Hosein* v. *Chutterdharee Singh and others.* 19th Sept. 1850. S. D. A. Decis. Beng. 494.—Barlow, Jackson, & Colvin.

158. A special appeal having been admitted with reference to the statement of a petitioner that the ground of action was a personal right accruing to every Rájah on his accession to the Ráj, cannot be prosecuted, after the death of the petitioner, on the ground of a continuing right by inheritance in his heir and successor. *Muharajah Kishen Kishore Manik* v. *Juggernath Sein Chowdhree and others.* 18th April 1850. S. D. A. Decis. Beng. 128.—Dick, Barlow, & Colvin.

APPEARANCE, SECURITY FOR.—See Criminal Law, 186.

APPROVER. — See Criminal Law, 9.

[1] And see the case of *Laulchand Ghose, Petitioner*, 2 Sev. Cases, 165.

ARBITRATION.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 2.
1. *Award*, 2.
2. *Setting aside Awards*, 14.
3. *Private Arbitration*, 31.
4. *Practice*, 34.
5. *Interest on Awards.—See* Interest, 8, 12.

I. In the Supreme Courts.

1. Certain differences between a discharged Secretary of a Steam-Tug Company and the Directors were referred to arbitration: on the arbitrators disagreeing, an umpire was appointed, who awarded in favour of the claimant on the evidence previously taken. The meetings of the arbitrators were not attended in person by any of the Directors, nor the proceedings held thereat objected to (although two of them had some knowledge of the progress of the arbitration); but *A. B.*, the then Secretary, having represented that he had authority to appear for the Directors, was summoned from time to time, and frequently attended, and was examined as a witness, and supplied proofs and books, &c., before the arbitrators, and subsequently communicated with the umpire. Held, first, that the notice to *A. B.* bound the Directors; and secondly, that, in the absence of objection to that course, the umpire might decide on the evidence taken by the arbitrators. *Mackenzie* v. *Hume and others.* 5th July 1849. 1 Taylor & Bell, 41.

II. In the Courts of the Honourable Company.

1. *Award.*

2. An arbitration award binds only those who are parties to it. *Sheo Pertab Sing and others* v. *Ali Khan and others.* 12th May 1846. S. D. A. Decis. Beng. 179.—Tucker.

3. Sec. 3. of Reg. VI. of 1813 is not applicable to awards of arbitra-

tors regarding personal property. *Omrao Naik, Petitioner.* 3d Feb. 1848. 1 S. D. A. Sum. Cases. Pt. ii. 130.—Tucker, Barlow, & Hawkins.

4. An arbitration award fixing the respective shares of proprietors, was held to be no bar to a claim by a farmer of one of them against his tenant for rent on a larger share than had been assigned to his lessor. *Johnson* v. *Sheikh Gholam Huzrut.* 18th March 1848. S. D. A. Decis. Beng. 210. — Tucker, Barlow, & Hawkins.

5. The recognition by a revenue authority of an award of arbitration is no bar to the trial of its validity in a Civil Court. *Munnee and another* v. *Bhowaneepershad.* 27th May 1848. 3 Decis. N. W. P. 170. —Thompson.

6. Where the parties to a suit consented *vivâ voce* to abide by the award of the Court of first instance, and declared they would make no appeal from its decision; it was held, that such agreement was not binding, as the judgment passed was not an award of arbitration under the provisions of Reg. XXI. of 1803. *Imambuksh and another* v. *Koorban Ali Beg.* 29th May 1848. 3 Decis. N. W. P. 177.—Thompson & Cartwright. (Tayler dissent.)

7. A point containing no question as to the accuracy of shop books, or of accounts, but one purely of evidence, cannot be referred to a *Panchâyit* for decision, and can only be properly disposed of by reference to a Court of Justice. *Gopeenath* v. *Indurmun Ram Sahoo.* 31st July 1848. 3 Decis. N. W. P. 265.—Thompson & Cartwright. (Tayler dissent.)

8. *A* sued *B* for a sum lent to him, and made *C* and *D*, *B*'s co-sharers, defendants, in consequence of an award of arbitration passed at the time of settlement, declaring them to be responsible, in proportion to their respective shares in the estate, for a certain sum of money. Held, that as *A* was not a party to the arbitration, which was appointed to decide the respective shares of *B* and his co-sharers in the estate, the award alone could not give *A* any right to sue *C* and *D*. *Kehtah Singh and others* v. *Mohun Singh and another.* 9th Jan. 1849. 4 Decis. N. W. P. 10.—Tayler, Thompson, & Cartwright.

9. Whilst a suit was pending for the recovery of money due on a bond, the parties agreed to submit the case to arbitration, and in the arbitration bonds a condition was entered, that, besides the matter which formed the subject of litigation in the suit, other money matters between them should be adjusted by the arbitrator, who accordingly, having inquired into the whole account between the parties, awarded not only the sum claimed in the suit, but the other monies also; and the Principal Sudder Ameen, upholding the award in all its integrity, decreed for the plaintiff the whole sum therein awarded. Held, by the Sudder Dewanny Adawlut, annulling the decision of the Principal Sudder Ameen, that under Sec. 6. of Reg. XXI. of 1803, in any case thus submitted to arbitration, no other matter but that at issue before the Court could become the subject of arbitration or of award. The case was accordingly remanded for re-trial. *Chowdree Hubbeeboolah* v. *Sahoo Dowlut Ram and another.* 4th June 1849. 4 Decis. N. W. P. 145.—Thompson, Begbie, and Lushington.

10. It is competent to parties, consenting to an arbitration, to place restrictions on the discretion of the Court as to the time of delivery of the award by the arbitrators. *Hurro Mohun Raee* v. *Raj Chundur Raee.* 25th Sept. 1850. S. D. A. Decis. Beng. 527.—Barlow & Jackson. (Colvin dubitant.)

11. In a suit where the arbitration bond fixed the period for an award to be given, and provided for an extension of the time at the discretion of the Court; it was held, that the

award could not be impugned on the ground of its having been given in after the limited period, when the delay was sanctioned by the presiding Judge. *Ibid.*—Barlow, Jackson, & Colvin.

12. The discretion vested in the Criminal Courts by Sec. 9. of Act IV. of 1840, as to the appointment of arbitrators, is expressly limited to a reference to arbitrators where the matter in dispute relates to the point of possession or forcible dispossession. *Issury Nund Dutt Ojha* v. *Shib Dutt Ojha and others.* 23d Dec. 1850. S. D. A. Decis. Beng. 588. —Dick, Barlow, & Colvin.

13. And where a Sessions Court had, *by its own authority,* enforced an award of arbitrators for a money payment, in compromise of a dispute of *right,* its proceedings were held to be unauthorized and illegal. *Ibid.*

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2. *Setting aside Awards.*

14. Held, that in consequence of excessive delay in the disposal of a case by arbitrators, the Civil Court was justified, under the circumstances, in refusing the execution of the award. *Syed Khyrat Hussein, Petitioner.* 15th Aug. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 37.—Reid.

15. Held, by the Sudder Dewanny Adawlut, that an award of arbitration cannot be set aside; but if it be not sufficiently specific, the matter may be referred back to the arbitrators for the amendment of their award. *Man Sing and another* v. *Deyalee Dassea and another.* 28th Nov. 1844. 7 S. D. A. Rep. 185.—Gordon.

16. It is not necessary to have corruption or partiality on the part of arbitrators proved by the evidence, when it may be proved by the records of the case, as in the instance of contradictory awards by the same arbitrators. *Sheikh Hadee Ullee and others, Petitioners.* 18th Feb. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 64.

17. An award made by a *Panchâyit,* settling a boundary to land forming an island, claimed by the inhabitants of the respective banks of the river, was set aside, under the circumstances, as having been made contrary to the provisions of the Bombay Reg. VII. of 1827; and the decision of the Sub-Collector, appointed by the Government to settle the boundary, annulling the award of the *Panchâyit,* and assigning a boundary, was confirmed. *The Mokuddims of Kunkunwady* v. *The Enamdar Brahmins of Soorpal.* 14th June 1845. 3 Moore Ind. App. 383.

18. A single suit may be brought to reverse several awards under Act IV. of 1840, involving the same grounds of action. *Ram Ruttun Raee and others.* 2d Aug. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 114. —Hawkins.

19. Where a Settlement Officer had not adhered to the rules prescribed by the Sudder Board of Revenue for the appointment of a *Panchâyit,* under Reg. IX. of 1833; it was held, that the award of such *Panchâyit* was not final, and that the Civil Court was competent to dispose of a suit for the matter awarded on its merits. *Adhar Singh and another* v. *Moheet Singh and another.* 11th Sept. 1847. 2 Decis. N. W. P. 323.—Tayler.

20. An action will lie in a Civil Court for the reversal of an award of arbitration under Reg. IX. of 1833, when the Collector has in any manner interfered in the award to influence the decision of the arbitrators, or to set it aside. *Aman Singh and others* v. *Jowahir Singh and others.* 15th Jan. 1848. 3 Decis. N. W. P. 21.—Tayler.

21. Held, that an award ought not to be set aside merely because the arbitrator examined witnesses in the absence of the defendant.[1] *Soobul*

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[1] Mr. Macpherson remarks on this decision—" But unless the absence of the party

Thakur Opadeeah v. *Punchunund Tikha*. 26th Feb. 1848. S. D. A. Decis. Beng. 115.—Tucker, Barlow, & Hawkins.

22. Four men were appointed as arbitrators; one died, and his death was reported, but his place was not supplied; the remaining three pursued their work, without objection, for upwards of four years, when they gave in an unanimous decision. Held, that such decision could not be set aside. *Maharaja Moheshur Buksh Singh* v. *Syud Oulad Hosein*. 4th April 1848. 7 S. D. A. Rep. 480.—Tucker, Barlow, & Hawkins.

23. An award of arbitration cannot be set aside by a Civil Court on the ground of its being inequitable, or upon any other ground than that of partiality or corruption. *Shahamut Ali* v. *Mt. Samla Bibi and others*. 8th April 1848. S. D. A. Decis. Beng. 296.—Tucker, Barlow, & Hawkins.

24. Want of unanimity on the part of arbitrators is not a sufficient reason for setting aside the award of the majority. *Rajnath Tewaree* v. *Gyanurain Pandeh*. 8th April 1848. 7 S. D. A. Rep. 484.—Tucker, Barlow, & Hawkins.

25. Where two arbitrators and an umpire were nominated by the parties to a suit, who bound themselves to abide by the opinion of the majority, and one arbitrator submitted his opinion separately, whilst the other and the umpire gave in their award jointly; it was held to be no reason for rejecting the award. *Bhugwunt Singh* v. *Sheodan*. 10th Aug. 1848. 2 Decis. N. W. P. 283.—Tayler.

26. Parties to a suit agreeing to submit the matter in dispute to arbitration, all pleas which may have been urged against the mode in which the suit has been brought cease, nor can a Court reverse the award on the ground that the suit had been improperly brought. *Mujlee and another* v. *Bhoopa and another*. 21st Nov. 1848. 3 Decis. N. W. P. 387.—Tayler & Thompson.

27. A *Kathinádár* cannot sue to set aside an award of arbitration between his *Ryots*. *Chooa Raee* v. *Munohur Raee and others*. 7th March 1849. S. D. A. Decis. Beng. 53.—Dick, Barlow, & Colvin.

28. An award, signed by three out of four arbitrators, is not thereby voided. *Sheikh Masoom Mundul* v. *Manik Mundul*. 15th March 1849. S. D. A. Decis. Beng. 67.—Dick, Barlow, & Colvin.

29. Where arbitrators appointed by the revenue authorities had exceeded their legal powers in deviating from the line marked out at the time of settlement for the division of certain land; it was held, that, under Construction No. 1371, the Civil Courts were fully competent to set aside their award. *Putram and another* v. *Bhugta and others*. 25th June 1850. 5 Decis. N. W. P. 128.—Begbie, Deane, & Browne.

30. Where a case was submitted to arbitration, and it appeared that *no* documents or witnesses were examined by the arbitrators; but that, *on the very day on which the Court's order reached them, two* arbitrators out of the *three* named gave their award, without having any other paper before them than the copy of the petition of plaint; that at that time the *third* arbitrator, or umpire, was not with the other two who made the award; and that the award thus irregularly made was forwarded to him by the two distant arbitrators; and that he, without conferring with them, or examining any documents or witnesses, affixed his signature to the award; it was held,

was wilful, there was substantial injustice in such a proceeding; and it must be presumed, that in the case in question there was some evidence that the absence was wilful."—Procedure of the Civil Courts, p. 308. No such evidence, however, appears on the face of the recorded decision; and the Court merely remarked that the fact of evidence having been taken in the defendant's absence was *per se* insufficient.

that an award thus irregularly made could not be enforced by a decree of Court. *Sahib Singh* v. *Muhr Singh and another*. 3d Sept. 1850. 5 Decis. N. W. P. 282.—Begbie.

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3. *Private Arbitration.*

31. In suits brought on private awards, the deed of award must bear a proper stamp before any suit can be instituted on it. *Rajah Muheeput Lal* v. *Kuman Singh*. 14th Sept. 1848. 3 Decis. N. W. P. 351. —Tayler. *Jeorakhun and another* v. *Uncharam*. 15th Sept. 1848. 3 Decis. N. W. P. 351.—Tayler. *Buldeo* v. *Mt. Jussodhur*. 2d April 1849. 4 Decis. N. W. P. 81.—Tayler.

32. Private arbitrators, having gone beyond the terms of the written reference to them; the Court, where the arbitrators depose to have acted with the full knowledge of the parties, and entire publicity, and partial effect has been given to their award, (no objection being made within one year,) will not presume that they really went beyond the trust designed to be placed in them. *Purbhoo Dial Singh* v. *Hunoman Pandee and others*. 28th June 1849. S. D. A. Decis. Beng. 257.—Dick, Barlow, & Colvin.

33. Private arbitrators are competent to act upon oral as well as written assent.[1] *Purbhoo Dial Singh and others* v. *Hunoman Pandee and others*. 28th June 1849. S. D. A. Decis. Beng. 257.—Dick, Barlow, & Colvin.

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4. *Practice.*

34. The Zillah Court having been closed on the last day allowed by law for application to enforce an award of arbitration under Sec. 3. of Reg. VII. of 1813, the Sudder Dewanny Adawlut held, that the applicant, in presenting his application on the next first Court-day, was in time. *Issur Chunder Paul Chowdree, Petitioner*. 10th May 1842. 1 S. D. A. Sum. Cases, Pt. ii. 31.—Court at large.

35. A case being referred by the Judge to a *Pancháyit* under Reg. VI. of 1832, the members of the *Pancháyit* are not competent to devolve the duty consigned to them on any other person, or any *one* member composing their body; as by Sec. 3. of Reg. VI. of 1832, it is clearly to be understood that it is an European officer *alone* who can constitute and appoint a *Pancháyit*. *Syud Behtur Alee* v. *Syud Massoom Alee and others*. 11th Feb. 1847. 2 Decis. N. W. P. 40.—Thompson.

36. One person cannot constitute a *Pancháyit* under Reg. VI. of 1832. *Ibid.*

36 *a*. A Civil Court cannot stay execution of an award under Act IV. of 1840, pending the decision of a suit instituted to reverse such award. *Mt. Sermut-oon-Nissa and others, Petitioners*. 26th April 1847. 1 S. D. A. Sum. Cases, Pt. ii. 97.—Tucker & Hawkins.

37. A *Pancháyit*, appointed under the provisions of Cl. 2. of Sec. 3. of Reg. VI. of 1832, are at liberty to enter into any inquiry they may deem proper *apart from the Court*, and the Judge cannot interfere in any way with their inquiries. *Sheo Singh* v. *Lala*. 19th Jan. 1848. 3 Decis. N. W. P. 26.—Cartwright.

38. A consent to arbitration, once formally given, cannot be withdrawn, on the mere allegation of one of the parties of unwillingness to abide by the award. *Kaleekunt Bidyabachusputtee, Petitioner*. 18th March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 135. —Hawkins.

39. Whilst a suit was pending in the Moonsiff's Court the parties appointed an arbitrator to decide the claim: he gave in his award, which was rejected by the Moonsiff on the ground of bribery, and he proceeded to try the case on its merits, and nonsuited the plaintiff. Held, that in

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[1] See Circular Order, 14th Nov. 1845.

an appeal to the Principal Sudder Ameen, it was his duty in the first place to try the validity of the award; for if that were upheld, the pleas urged in favour of a nonsuit could not be entered upon; but that, should he confirm the Moonsiff's ruling as to the illegality of the award, he might then proceed to enter on the merits of the case. *Mujlee and another* v. *Bhoopa and another.* 21st Nov. 1848. 3 Decis. N. W. P. 387. —Tayler & Thompson. (Cartwright dissent.)

40. A suit cannot be brought to give effect to the award of a *Panchâyit* under Reg. IX. of 1833, such, award having been overruled by the revenue authorities. *Bunwaree Lal, Petitioner.* 26th Dec. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 147. —Hawkins.

41. Held, that a Principal Sudder Ameen had acted most irregularly in compelling a party to enter his Court, and join in submitting to arbitration a case from which he had been released by the Moonsiff. *Bickurmajeet* v. *Thummun Singh.* 9th Jan. 1849. 4 Decis. N. W. P. 13.— Tayler, Thompson, & Cartwright.

ARMENIAN.—*See* Husband and Wife, 9.

ARREARS OF REVENUE.—*See* Action, 24. 59, 60. 93. 95, 96. 98. 103. 106. 109, 110. 116; Assessment, 61 *et seq.*; Interest, 17 *et seq.*; Sale, *passim.*

ARREST.

1. A mere arrest, without commitment to jail, is no bar, under Sec. 3. of Reg. VI. of 1830, to the subsequent arrest and imprisonment of a judgment debtor.[1] *Mt. Bimla Debbea Chowdrain, Petitioner.* 21st March 1842. 1 S. D. A. Sum. Cases, Pt. ii. 25.—Reid.

2. The imprisonment of a debtor by the Civil Court, against the will of his creditor, and his subsequent release in default of the deposit of diet money, as required by Sec. 2. of Reg. VI. of 1830, is no bar, under Sec. 3. of the same Regulation, to the issue of process of arrest against the debtor on the motion of a creditor. *The Salt Agent of Chittagong, Petitioner.* 16th Jan. 1843. 1 S. D. A. Sum. Cases, Pt. ii. 45.—Reid.

3. Process of arrest under Sec. 4. of Reg. II. of 1806, taken out against a person when within the jurisdiction of the Court issuing it, may be served beyond it. *Arratoon, Petitioner.* 21st April 1845. 1 S. D. A. Sum. Cases, Pt. ii. 67.—Reid.

[1] Under the strict enforcement of Sec. 2. of Reg. VI. of 1830, which prescribes that no process of arrest shall issue without a deposit of diet money for thirty days having been previously made, the above question could not have arisen.

ASSAULT.—See Criminal Law, 90.

ASSESSMENT.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 2.
1. *Generally*, 2.
2. *Fixed Rent*, 22.
3. *Enhancement of Rent*, 27.
4. *Notice of Enhancement*, 45.
5. *Notice of demand*, 60.
6. *Arrears of Rent*, 61.
7. *Action for arrears of Rent.* —*See* Action, 24. 59, 60. 93. 95, 96. 98. 103. 106. 109, 110. 116.
8. *Interest on balances of Rent.* —*See* Interest, 17 *et seq.*
9. *Jurisdiction as to assessment.* —*See* Jurisdiction, 49, 50.
10. *Reduction of Rent.* — *See* Limitation, 37; Patnidar, 6. 10.

I. In the Supreme Courts.

1. By Stat. 33 Geo. III. c. 52.

s. 158. (for, among other things, making better provisions for the good order and government of the towns of Calcutta, Madras, and Bombay,) assessments are directed to be made on the owners or occupiers of houses, buildings and grounds, "according to the true and real annual values thereof." Upon a rate made in pursuance of this Statute, the Quarter Sessions at Bombay assessed the annual value of a cotton-pressing factory, having fixed machinery, upon the gross receipts, after making an allowance of 10 per cent. for tenants' profits. Held, by the Judicial Committee of the Privy Council, reversing the order of confirmation of the Sessions by the Supreme Court at Bombay, and quashing the rate, that the principle of the assessment was erroneous, the proper measure of rateable value of the building being the rent (subject to the deductions required by the Stat. 6 & 7 Will. IV. c. 96.) that the building might reasonably be expected to be let for to a yearly tenant. *Fawcett and others* v. *The Justices of Bombay.* 20th June 1845. 5 Moore, 143. 3 Moore Ind. App. 408.

II. In the Courts of the Honourable Company.[1]

1. *Generally.*

2. A sub-tenant of any field, by the usage of the country, is entitled to a moiety of any remission granted by Government to the superior tenant, there being no special agreement to the contrary. *Nursappa Virjyaree* v. *Rugooputtee Bhut Oopadya.* 28th July 1841. Bellasis, 22.—Marriott, Giberne, & Greenhill.

3. Although one of several sharers may be allowed, under certain circumstances, to sign an agreement for the payment of rent, this privilege must be restricted to cases of necessity, and cannot be extended to a case in which, the signatures of the other sharers being procurable without difficulty, one takes upon himself to bind the others to pay, for so long a period as eight years, a large amount of rent. *Raja Bishennath Singh and another* v. *Sooruj Nurayn Chowdry and others.* 6th Nov. 1845. S. D. A. Decis. Beng. 319.—Reid.

3*a*. Where a Sudder Judge had, in dismissing a former suit of the appellants, finally settled the permanency of the rent-roll between the parties; it was held, that a suit was untenable by the appellants to new assess the tenure on the ground of its not being a *Mukarrarí* or *Istimrárí* tenure, the appellants being the heirs of those who gave the rent-roll. *Nubkoomar Chowdree and others* v. *Sooburn Beebee and others.* 16th March 1846. S. D. A. Decis. Beng. 102.—Dick.

4. Where land was leased nominally for the cultivation of indigo, and the agreement was in every other respect an open unconditional grant of a certain quantity of land at a certain rent, without any prohibitory stipulation; it was held to be no violation of the agreement that the lessee sowed and raised a cold-weather crop also, and that nothing beyond the rent agreed to could be legally demanded from him by the lessor. *Maseyk* v. *Ramchunder Sahee.* 29th June 1846. S. D. A. Decis. Beng. 245.—Rattray, Tucker, & Barlow.

5. Rent cannot be awarded to a plaintiff who has not established any *Zamíndárí* or proprietary right, and is not a recorded proprietor. *Mt. Kishna* v. *Ram Suhae Missur.* 8th Sept. 1846. 1 Decis. N. W. P. 144.—Thompson, Cartwright, & Begbie.

6. The rate of assessment of lands, as specified in a deed of sale of such lands, was upheld, notwithstanding a plea of error, and the revenue records exhibiting a higher rate. *Radha Kishen Bhuddur and another* v. *Hurkishore Nundee.* 19th May

[1] Under this head I have arranged the cases relating to rent of every description.

1847. S. D. A. Decis. Beng. 159. —Dick, Jackson, & Hawkins.

7. A summary order of the revenue authorities cannot set aside the right of a farmer to recover his rents. *Srinath Churn Nundee* v. *Jonab Ali Khan.* 22d June 1847. S. D. A. Decis. Beng. 279.—Hawkins.

8. Held, that under Cl. 2. of Sec. 10. of Reg. II. of 1828, the *Zamíndár*, and not the under farmer, must seek for the refund of collections made on lands attached for purposes of resumption, but eventually declared not liable to assessment. *Maharajah Muhtab Chundur* v. *Gudhadhur Banerjea and others.* 14th Aug. 1847. S. D. A. Decis. Beng. 439.—Dick.

9. The receipt of rent, without demur as to right of occupancy, is tantamount to an acknowledgment of right of possession in the rent-payer. *Broderick* v. *Hurmohun Raee.* 11th Sept. 1847. S. D. A. Decis. Beng. 536.—Tucker, Barlow, & Hawkins.

10. If a farmer sue for a money-rent at a given rate, he is bound, in the event of the claim being disputed by the tenant, to shew that such tenant has previously paid at the same rate, or has executed an engagement to the effect that he will pay it. *Sheikh Nubbee Buksh* v. *Shewuk Mehtoon.* 29th June 1848. 7 S. D. A. Rep. 427.—Tucker, Barlow, & Hawkins. *Soaphool Raee* v. *Kerut Nath Jha and others.* 14th Sept. 1848. S. D. A. Decis. Beng. 820.—Rattray.

11. And if his claim be for enhanced rent, he is bound to shew that he has taken the proper steps to entitle him to recover at the rate claimed by him. *Ibid.*

12. Where, in a suit to set aside the proceedings of the Settlement Officer, there was nothing in any part of the Collector's proceedings to shew that the defendants had separate heritable and transferrable property in the land, or that such property consisted of interests of different kinds; and it appeared that the Settlement was made with the defendants, apparently because they had the means of carrying on the cultivation, and because they were *Bashindas*; and moreover, that no claim had been advanced by the defendants, in the Civil Courts, to a proprietary right in the whole village; it was held, that the Collector had no authority, under Cl. 1. of Sect. 10. of Reg. VII. of 1822, to determine and prescribe the manner and proportion in which the net rent or profit arising out of the limitation of the Government demand should be distributed between the parties to the suit. *Hursuhal and others* v. *Syed Zuffur Yab Ali and others.* 16th Feb. 1848. 3 Decis. N. W. P. 57.—Tayler.

13. Excess payment of rent was adjudged to a party who had paid it to save his property from sale when attached under Reg. VII. of 1799. *Sheikh Munna* v. *Gooroopurshad Bhoomik and others.* 25th March 1848. S. D. A. Decis. Beng. 227. —Tucker, Barlow, & Hawkins.

13 *a.* A party may sue in one action to establish his right to assess lands held by the defendant, and for which he had not previously paid rent, and also to recover from him rent for other lands at a higher rate than he had previously paid. *Dwarkinath Singh* v. *Parbuttee Churn Sirkar and others.* 12th Sept. 1848. S. D. A. Decis. Beng. 812.—Hawkins.

14. A suit for arrears of *Talookdárí* rent, as due on an *Ousut Talook*, cannot lie for any period during which the plaintiff may have obtained, or may have applied for and received, the order of a competent authority, with a view to his obtaining possession of the lands of the *Talook* by the dispossession of the *Talookdárs*. *Baboo Gopal Lal Thakoor* v. *Mirtunjoy Shah and others.* 28th March 1849. S. D. A. Decis. Beng. 79.—Dick, Barlow, & Colvin.

15. A *Potta*, being expressly for the whole of a given *Mahâll*, without reservation of right to enhance the *Jama*, and the entire lands of such *Mahâll* having been held for fifty-six years at an uniform rent, a claim to assess an excess of lands, beyond the quantity entered in the *Potta*, as being included in the *Mahâll*, was rejected. *Kewul Kishen Chuckerbutty and others* v. *Debnurain Chuckerbutty and others*. 26th July 1849. S. D. A. Decis. Beng. 306.—Dick, Barlow, and Colvin.

16. The farmer of an estate is competent to sue its owners, one of them being a purchaser since the farming lease was granted to such farmer, for the amount which, during the term of his farm, they had illegally collected from the *Ryots*. *Jugunnath Dass* v. *Nubkishore Bose and others*. 15th Jan. 1850 S. D. A. Decis. Beng. 409.—Dick, Barlow, & Colvin.

17. A payment to a wrong party cannot release the *Ryots* from their responsibility to the farmer for the term of his lease. *Goureedutt and others* v. *Chooneelal*. 15th Aug. 1850. S. D. A. Decis. Beng. 410. —Barlow & Colvin.

18. The general rule, on a claim by a *Zamíndár* to assess lands within his *Zamíndárí* at *Pergunnah* rates, is, that the *onus* is on the defendant, the party holding the lands, to prove his special title of exemption from such assessment. *Ramkoomar Moostofee and others* v. *Roopnurain Purdhan and others*. 29th Aug. 1850. S. D. A. Decis. Beng. 451. —Dick, Barlow, & Colvin.

19. *A* entered into an agreement to pay to *B* *Swámí Bhogam* for certain land let to him by *B*'s father-in-law; *C* cultivated the land by permission of *A*, under a mortgage from him. *B* sued *A* and *C* for the *Swámí Bhogam* due. Held, that as *A* alone took the land in question from *B* on *Swámí Bhogam* tenure, *he alone* must be held responsible for payment of the amount sued for, and that *C* must be released from all liability on account of the same. *Lutchmana Iyen* v. *Cooppummaul*. 5th Sept. 1850. S. A. Decis. Mad. 69.—Hooper & Thompson.

20. Where a *Zamíndár* himself admits that a plaintiff, calling himself a *Talookdár* under him, is the holder of the *Talook* on the right of which he sues, the claim of the plaintiff for the assessment of *future* rents within the *Talook* is not open to question by the *Ryots*, or to dismissal by the Courts, because he has not, *on his own part*, established his right as *Talookdár*. *Nubkishen Ghose* v. *Budderooddeen Mejee*. 19th Sept. 1850. S. D. A. Decis. Beng. 499.—Barlow, Jackson, & Colvin.

21. It is not necessary for a *Zamíndár*, suing to assess the lands of a *Ryot* at *Pergunnah* rates, to lay his suit to cancel a *Potta* pleaded by the *Ryot*, and held good in previous summary proceedings. The *Zamíndár* may prefer his claim generally, and it is for the *Ryot* to plead and prove his special *Potta*. *Ramkoomar Mustofee and others* v. *Rammohun Purdhan*. 26th Dec. 1850. S. D. A. Decis. Beng. 603.—Dick, Barlow, & Colvin.

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2. *Fixed Rent*.

22. *A* obtained a decree against *B*, by which certain lands were adjudged to belong to *A*'s *Zamíndárí*, and by which it was ordered that both parties should assess the lands according to law and the rates of the *Pergunnah*. Disputes arising, the Judge issued an order that *A* was competent to measure the lands, and demand from the *Talookdár* in possession a fair rent, admitted by the *Ryots* (جمع واجب مقبول رعایا). Held, that *A* was competent to assess the lands at the Pergunnah rates; that the words *Jamâ Wájib-i Makbúl-i Raáyá*, did not signify "the rents fairly collected from the *Ryots*," and did not give the *Ryots* the right of

fixing their rent at discretion; that the decree and the order, taken together, were for the demand of a fair rent; in one, according to the *Pergunnah* rates; in the other, according to the agreement of the *Ryots;* and that the meaning of the phrase in the latter was, that if the *Ryots* said one rupee for a certain quantity of land is a fair rent, and the *Zamíndár* demanded two rupees rent as the fair one, then the difference could only be settled by fixing the rent at the rates prevalent in the *Pergunnah.—Baboo Goordass Rai* v. *Ranee Kutteeanee.* 17th March 1845. S. D. A. Decis. Beng. 57.—Gordon.

23. In a suit to set aside attachment for rent, it was held, that a summary award under Reg. VII. of 1799, passed in 1816, was no ground for declaring the rent payable in subsequent years, nor for declaring it fixed. *Nundkomar Sawunt* v. *Gyaram Mundle and others.* 11th Feb. 1847. S. D. A. Decis. Beng. 52.—Tucker.

24. Under the provisions of Sec. 59. of Reg. VIII. of 1793, and Sec. 7. of Reg. IV. of 1794, a tenant is entitled to demand a *Potta* at fair ascertained rates, and, consequently, to have the rates settled; a claim, therefore, by a tenant to have the rent assessed on his holding cannot be dismissed on the ground that the proofs adduced tend to shew that he has held his land at a variable rate. *Hurree Muthee Shah and others* v. *Adooram Fotedar and others.* 22d Sept. 1847. S. D. A. Decis. Beng. 564.—Hawkins.

25. The provisions of Secs. 54. & 55. of Reg. VIII. of 1793, cannot affect a *Jama* fixed by the officers of Government previous to that enactment. *Rajah Madho Singh* v. *Rajah Bidyanund Singh.* 11th May 1848. S. D. A. Decis. Beng. 442. —Rattray.

26. A *Ryot,* not holding under any specific engagement, is not barred, by having paid an uniform rent for upwards of twelve years, from claiming a re-measurement and adjustment of *Jama* at *Pergunnah* rates. *Durpnurain Raee* v. *Sreemunt Raee and others.* 7th June 1849. S. D. A. Decis. Beng. 188. —Dick, Barlow, & Colvin.

3. *Enhancement of Rent.*

27. *A* erected a house on *B's* land on the understanding that he was never to be called upon for more than a certain rent, then agreed upon. *C* purchased *A's* house, and afterwards *D* bought *B's* land, and brought an action to oust *C* altogether. Held, that *C,* possessing the rights of him from whom he purchased, could neither be ejected nor compelled to pay a rent exceeding that which had been agreed to by the proprietor of the land with *A,* his predecessor. *Nichun Sahoo* v. *Jhooree Sahoo.* 23d July 1845. S. D. A. Decis. Beng. 243.—Rattray, Tucker, & Barlow.

28. The plaintiff obtained possession of a certain *Mauza* by a decree of Court. The defendant, who was one of the old *Zamíndárs,* held a portion of the *Mauzá* without any *Potta* or adjustment of rent; the plaintiff, not being able to bring him to terms, served him with a notice of enhanced rent under the provisions of Reg. V. of 1812, the rate demanded being that of other lands of the same description in the village. Held, that the defendant, not being a *Kadím Kashtkar,* or hereditary cultivator, as he asserted, could not claim exemption from enhancement of rent under the provisions of Sec. 26. of Act I. of 1845. *Bhuwanee Tuhul Singh* v. *Mt. Omutoolbutool.* 11th June 1850. 5 Decis. N. W. P. 114.— Begbie, Deane, & Browne.

29. Held, that a Principal Sudder Ameen was justified by law in fixing an enhanced demand for rent made on the appellant by the *Zamíndár* (plaintiff respondent) at a

rate not exceeding that specified in the written notice served by the latter on the appellant under the provisions of Sec. 9. of Reg. V. of 1812, although in excess of that proposed by the revenue authorities, and adjudicated by the Moonsiff. *Ibid.*

30. In a claim for enhanced rent, the decision of the revenue authorities is not binding on the Civil Courts, although it is the duty of the latter to pay every attention to the judgment of those authorities, whose opportunities and means of obtaining correct information on such subjects are necessarily very favourable. *Ibid.*

31. A farmer holding a lease from a manager of an estate appointed under Sec. 26. of Reg. V. of 1812, and Reg. V. of 1827, is competent to enforce the provisions of Sections 9. & 10. of Reg. V. of 1812, in regard to the enhancement of rent.[1] *Sheikh Emaum Buksh* v. *Sheikh Enayut Ali.* 11th Aug. 1846. 7 S. D. A. Rep. 277.—Reid, Dick, & Jackson.

32. A summary suit for increase of rent is not cognizable under Sec. 10. of Reg. VIII. of 1831. *Kalee Purshad Pandee* v. *Rajah Bidanund Singh Bahadur.* 23d Nov. 1846. S. D. A. Decis. Beng. 391. —Rattray, Tucker, & Barlow.

33. A claim for the enhancement of the rent of a shop was decreed in favour of the plaintiff, a farmer, it appearing from the record that he had full authority from the proprietors to enter into new engagements with the shopkeepers and other tenants, there being also no fixed rate for shop-rent, and it appearing that the same rent demanded by the plaintiff from the defendant was paid by the occupants of other shops such as the defendant occupied. *Kasseenath Byragee* v. *Bhyrub Chundur Mookerjea.* 4th Sept. 1847. S. D. A. Decis. Beng. 510.—Tucker, Barlow, & Hawkins.

34. Where a *Málguzár* claims *Pergunnah* rates in contradistinction to privileged rates, and founds his claim upon a division to which both parties had consented, such a claim does not, strictly speaking, involve the "increase" of rent contemplated by Sec. 10. of Reg. VIII. of 1831. *Alum Singh* v. *Zalum Singh and others.* 15th Sept. 1847. 2 Decis. N. W. P. 331.—Tayler & Lushington.

35. Although the provisions of Reg. V. of 1812 give no authority to enhance rents without an inquiry into an equitable rate, yet auction purchasers may, under Sec. 26. of Act I. of 1845, which modifies that law, enchance rents at discretion, with exception of certain descriptions of tenures which are not liable to enhancement. *Sheozore Singh* v. *Alee Nukee.* 28th Dec. 1847. 2 Decis. N. W. P. 386.—Tayler.

36. In a suit by a *Huwaladár* to raise the rents of his *Ním-Hawaladárs*, in consequence of his own *Jama* having been enhanced by the *Talookdárs*, the Lower Appellate Court's decree for the plaintiff, on the principle that the subordinate holders were liable to enhancement in the same proportion as their superior, was set aside, and the case remanded to be disposed of according to the rates paid in the *Pergunnah* by *Ním-Huwaladárs* to *Huwaladárs*. *Mirtenjae Mookerjea and others* v. *Manik Chunder Das.* 5th Feb. 1848. 7 S. D. A. Rep. 430.—Tucker, Barlow, & Hawkins.

37. A claim for enhancement of rent by a purchaser is not tenable when it has been decided in a former suit, brought by the party from whom such purchaser derives his title, that the land is not liable to enhancement. *Casseenath and others* v. *Fuqueera Khan.* 21st Feb. 1848. 3 Decis. N. W. P. 59.—Tayler, Thompson, & Cartwright

[1] This decision declares the *legal* competency of the farmer under such circumstances, but was not intended by the Court to interfere with, or abridge, the general control of the revenue authorities over managers of estates appointed by them.

38. An enhanced rate of rent cannot be recovered or exigible in a Court of Justice, without the *written* engagements prescribed by Sec. 9. of Reg. V. of 1812; a *verbal* acknowledgment is not sufficient. *Nowrung Singh* v. *Bachunram Oopudya and others.* 30th Aug. 1848. 3 Decis. N. W. P. 320.—Thompson & Cartwright.

39. Lands held under two *Pottas*, or permanent hereditary building leases, and *Kubalas*, or deeds of purchase of hereditary *Potta* lands, such lands so leased and conveyed being moreover situate in the midst of a populous city, and measured by cubits, were held to come under the provisions of Sec. 8. of Reg. XLIV. of 1793, and Sec. 30. of Reg. XI. of 1822, and consequently not to be liable to enhancement of rent. *Lukheenurain Das and others* v. *Chundur Madhub Soor and others.* 2d Aug. 1849. S. D. A. Decis. Beng. 317.—Dick, Barlow, & Colvin.

40. Where a claim is for possession only, the decree ought not to award an enhancement of the rent of under-tenants holding by an alleged *Mukarrarí* tenure. The plaintiff must bring a fresh suit for such enhancement, if he conceive himself entitled to it. *Gholam Sufdur* v. *Zynoo Bibi and others.* 8th Aug. 1849. S. D. A. Decis. Beng. 333. —Jackson.

41. The first of a series of under-tenants can sue to raise the rent of the tenant next below him in the series, although such first tenant may have also acquired an interest in some lower tenure of the series. *French* v. *Kishen Koomar Khan and others.* 18th Dec. 1849. S. D. A. Decis. Beng. 459.—Colvin.

42. An estate was purchased by Government at a public sale for arrears of revenue, and a suit was instituted by the Collector, on behalf of Government, to enhance the rent of the defendants. After this, the estate was transferred to the former proprietor, who then took the place of the Collector in the suit. Held, that the transfer by the Government, no condition being annexed that he was to exercise only his former rights over the under-tenants, invested such transferee with all the rights and privileges of an auction purchaser, and that he was entitled to carry on for his own benefit the suit previously instituted by the Collector. *Bhyro Indernurain Raee* v. *Mudungopal Bhadooree and others.* 15th March 1849. S. D. A. Decis. Beng. 70. —Barlow & Colvin. (Dick dissent.) *Bhyrub Inder Nurain Raee* v. *Roopchundur Shah and others.* 31st Dec. 1849. S. D. A. Decis. Beng. 488.—Barlow, Colvin, & Jackson.

43. A decision awarding balances of rent at a particular rate of *Jama* in a suit for the arrears of a limited number of years, is not to be held as permanently fixing that rate of *Jama*, and will not therefore be a bar to a subsequent suit for enhancement in regard to the same land. *Mohummud Ushkur and another* v. *Kasheenath Surmah.* 27th June 1850. S. D. A. Decis. Beng. 323.—Barlow Jackson, & Colvin.

44. Held, that as the principle which governs the right of a proprietor to increased rent is essentially the same, whatever may have been the occasion of the transfer of the property on which the increased rent is demanded, a purchaser at a sale in execution of a decree of Court is equally entitled with one at a sale for the recovery of arrears of assessment only, although Reg. V. of 1812 is silent in regard to the former description of sale.[1] *Rajah Juggut Singh* v. *Ishree.* 29th June 1850. 5 Decis. N. W. P. 141.—Begbie, Deane, & Brown.

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4. *Notice of Enhancement.*

45. The notice directed by Sec. 9.

[1] Sec. 25. of Reg. XXVI. of 1803, which law was co-existent with Reg. V. of 1812, creates a general analogy between the two kinds of sale.

of Reg. V. of 1812, to be served by purchasers at public sales enhancing rent, upon the cultivators or tenants, should indicate the *specific rent* fixed on the land; but it is not necessary to specify the extent of the enhancement. *Gholam Imam and another* v. *Joynarain Bose and another*. 25th Nov. 1845. S. D. A. Decis. Beng. 437. — Tucker. *Duberul Huq* v. *Joynarain Bose and another*. 31st May 1847. S. D. A. Decis. Beng. 185.—Tucker.

46. Held, that a notice issued under Sec. 9. of Reg. V. of 1812 is not vitiated by an omission to specify the quantity of land in the possession of the parties served with it, or of the names of all the parties in possession, it being sufficient to specify the names of those recorded as such in the *Zamíndár*'s office. *Maharajah Kishen Kishore Manik* v. *Rajchunder Dhur and others*. 14th April 1846. 7 S. D. A. Rep. 261. —Tucker.

47. Where the plaintiff, though entitled to assess lands in possession of the defendant, had not pursued the course prescribed in Sec. 9. of Reg. V. of 1812; it was held, that under Sec. 10. of the same Regulation no greater rent was exigible by process of distress or confinement of person, nor recoverable by suit in Court, than the defendant was bound to pay under his previous engagements. *Ishur Chunder Rae* v. *Abadoollah*. 14th April 1846. S. D. A. Decis. Beng. 158.—Tucker.

48. Enhanced rent cannot be recovered unless a notice be issued, stating the specific rent demanded in conformity with Sec. 9. of Reg. V. of 1812. *Talwur Chowdree* v. *Rampersaud and others*. 19th May 1846. S. D. A. Decis. Beng. 191.—Barlow.

49. The Courts cannot decree an enhancement of *Jama*, where no notice has been served on the tenants under Sec. 9. of Reg. V. of 1812. *Gholam Ruhman and others* v. *Rajah Radha Kaunth*. 5th June 1847. S. D. A. Decis. Beng. 196.—Tucker, Barlow, & Hawkins.

50. The judgment of the Lower Court was reversed because it awarded enhanced rent without proof of the prescribed notice under Secs. 9. & 10. of Reg. V. of 1812. *Taramunni Chowdrain* v. *Gour Kishore Nag and others*. 10th June 1847. 7 S. D. A. Rep. 315.—Hawkins.

51. The prior notice of demand for enhancement of rent required by Sec. 9. of Reg. V. of 1812 need not contain the previous *Jama*, nor the quantity of lands on which the increase is demandable. *Khosalee Biswas* v. *Sheikh Kureemoollah and others*. 31st Aug. 1847. 7 S. D. A. Rep. 388.—Tucker.

52. Farmers under the Hazaríbágh agency cannot enhance the rents of their tenants without formal notice; and there being no custom to the contrary, the law as administered in the regulation provinces is applicable. *Shewaram and another* v. *Ghurgope*. 29th Jan. 1848. S. D. A. Decis. 40.—Tucker, Barlow, & Hawkins.

53. A right to enhance having been agreed upon, it was held, that the enforcement of such agreement must nevertheless be preceded by the usual notice. *Moulvee Mohummud Kuleem Khan* v. *Lukhee Kunth Hore and others*. 5th April 1848. S. D. A. Decis. Beng. 287.—Dick, Jackson, & Hawkins.

54. A decree declaratory of a landholder's right to enhance his tenant's rent does not necessarily compel the tenant to pay such enhanced rent in the absence of a notice under Secs. 9. & 10. of Reg. V. of 1812, and no payment beyond the amount specified in the notice can be compulsory. *Juggut Mohunee Dassee* v. *Pursnath Chowdhree and others*. 19th July 1848. S. D. A. Decis. Beng. 694. —Hawkins.

55. A right of assessment may be declared by a party without service of notice under Secs. 9. & 10. of Reg. V. of 1812, though he cannot claim

rent at an enhanced rate, until he has gone through the form prescribed by law. *Dwarkinath Singh* v. *Parbuttee Churn Sirkar and others.* 12th Sept. 1848. S. D. A. Decis. Beng. 812.—Hawkins.

55*a*. Failure in a plaintiff to prove the service of the notice under the provisions of Reg. V. of 1812 will not justify a nonsuit by the Lower Courts, which must proceed to judgment on a trial of the merits of the case. *Jagamohan Mullic, Petitioner.* 13th Feb. 1849. 2 Sev. Cases, 451.—Jackson.

56. Notice of enhancement is not necessary to be proved where the plaint is for arrears at the rate paid to a former *Zamíndár. Sheikh Nujeemooddeen and others* v. *Chytun Churn.* 7th June 1849. S. D. A. Decis. Beng. 187.—Dick, Barlow, & Colvin.

57. A general notice issued by a *Zamíndár* to his *Ryots*, prohibiting them to cultivate without taking *Pottas* from him, is not a due notice under Secs. 9. & 10. of Reg. V. of 1812. *Hoolas Tewaree* v. *Bundoo Tewaree.* 30th Jan. 1850. S. D. A. Decis. Beng. 8.—Barlow, Colvin, & Dunbar.

58. Held, that the new proprietor of an estate could not demand enhanced rent from the owners of an indigo factory within it, without formally giving notice to the tenants to enter into engagements, or to quit. *Muha Rajah Sreesh Chundur Buhadur and another* v. *Bishoonath Biswas and others.* 3d April 1850. S.D.A. Decis. Beng. 91.—Dick.

59. A notice of enhancement of rent under Secs. 9. & 10. of Reg. V. of 1812 can only have prospective effect. *Mohummud Ushkur and another* v. *Kasheenath Surmah.* 27th June 1850. S. D. A. Decis. Beng. 322.—Barlow, Jackson, & Colvin.

5. *Notice of Demand.*

60. The receipt for a notice of demand of rent from a *Patnídár* should be given by the defaulter himself, or by his manager of the tenure in arrear. *Lootf-o-Nissa Begum* v. *Kowur Ram Chundur and others.* 28th Aug. 1849. S. D. A. Decis. Beng. 371.—Dick, Barlow, & Colvin.

6. *Arrears of Rent.*

60*a*. Money having been advanced by a joint-sharer of a *Mahál* in liquidation of Government revenue, and the estate protected from public sale; it was held, that the sharers were liable for the payments so made, and that the decree of Court subsequently obtained against the defaulting sharers must be executed against the aliquot shares of such defaulters. *Shumsoonnissa Bebee, Petitioner.* 24th April 1847. 2 Sev. Cases, 409.—Hawkins.

61. Purchasers of an indigo factory, not producing the deed of sale under which their purchase was effected, were held liable for arrears of rent on a farm taken for the factory by the former proprietors. *Ramchunder Dobey and others* v. *Bheirobee Dassea and others.* 26th May 1847. S. D. A. Decis. Beng. 172.—Dick, Jackson, & Hawkins.

62. In suits brought for the recovery of balance of rents, which include claims to balances prior and subsequent to the period of twelve years from the institution of the suit, it is competent to the Courts to inquire into, and to decide upon, the claim for any period within the twelve years. *Gungolee Singh* v. *Mt. Dhana and others.* 1st June 1847. 2 Decis. N. W. P. 152.—Tayler.

63. The fact of a party having sued summarily for the rents of one period, is no ground for concluding that he abandons his claim for balances of previous years, for which he cannot sue summarily. *Ramgopal Mookerjea* v. *Golam Durbesh Jowur and others.* 24th June 1847.

7 S. D. A. Rep. 348.—Tucker. *Ramgopaul Mookerjee* v. *Junmjoy Moonshee*. 30th Dec. 1848. S.D.A. Decis. Beng. 896.—Barlow, Jackson, & Hawkins.

64. In a suit for a balance of rent, it was held, under Constructions Nos. 380 and 574, that the production of a *Kabúliyat* is not indispensable, if, by the accounts, it appears that arrears are *bonâ fide* due. *Gholam Mohummud Shah* v. *Bunjooree Cheragee*. 7th Aug. 1843. S.D.A. Decis. Beng. 403.—Tucker, Barlow, & Hawkins.

65. A *Kabúliyat*, duly established, is sufficient to sustain a claim for arrears of rent; and a plea of the tenure not being liable will not avail after such an engagement. *Muha Rajah Sumbhoonath Singh* v. *Mal Raee Moondah and others*. 8th April 1848. S. D. A. Decis. Beng. 304. — Tucker, Barlow, & Hawkins.

66. A claim to arrears for a period during which *Khás* possession was proved to have been held was disallowed, although the under-tenants failed to make good their plea of a specific amount of rents having been collected during such possession. *Bhyro Indernurain Raee* v. *Mudungopal Bhàdooree and others*. 15th March 1849. S. D. A. Decis. Beng. 70.—Barlow & Colvin.

66*a*. With reference to the provisions of Sec. 18. of Reg. XXVII. of 1802, the late proprietor of an estate, sold and purchased by Government for arrears of *Péshkash*, is entitled to recover rent due by the *Ryots* for lands they had cultivated and enjoyed during the time that the estate was his property, and before it was purchased by the Government. *Chullapully Ramakristnamah and another* v. *Naidoo Paupoodoo*. 23d Nov. 1849. S. A. Decis. Mad. 119. — Thompson & Morehead.

67. An illegality on the part of a landholder in the mode of attaching for future rents cannot affect his claim for arrears upon former *Kists*, for which he may proceed regularly by distraint. *Radhika Chowdhrain* v. *Rainey and others*. 5th March 1850. S. D. A. Decis. Beng. 35.—Barlow, Colvin, & Dunbar.

ASSESSOR.

1. Under the provisions of Cl. 3. of Sec. 3. of Reg. VI. of 1832, the opinion of a single assessor, if only one be appointed, is wholly inoperative. *Obhayah* v. *Syud Buksh Ali Chowdhree*. 13th June 1849. S. D. A. Decis. Beng. 198.—Dick, Barlow, & Colvin.

ASSETS

1. On the objection of claimants under Reg. VII. of 1825, to certain real property attached for sale in execution of a decree, the decree-holder instituted a suit to establish the liability of the property claimed against the claimants and his own judgment-debtors, and got a final decree. On reviving execution of the original decree on the strength of the second decree of liability, the property was re-attached under Reg. VII. of 1825, and, being sold, was purchased by the decree-holder himself. On the day of sale other claimants (under another decree) now came in to participate in a rateable distribution of the assets, which was rejected by the native Principal Sudder Ameen, but admitted by the Zillah Judge. Held, by the Sudder Dewanny Adawlut, on special appeal, that claimants under decrees, who have not procured the issue of the process of attachment simultaneously with the first decree-holder, who had duly sued out execution prior to the claim for a distribution of the assets realized, were not entitled to a rateable share in such assets.[1] *Anandmai and another*,

[1] See Circular Order No. 42, dated the 26th Jan. 1844.

Petitioners. 10th March 1847. 2 Sev. Cases, 371. 1 S. D. A. Sum. Cases, Pt. ii. 93.—Tucker.

2. A decree-holder, complaining of unequal and excessive distribution of assets to a rival decree-holder, was, under the circumstances, directed to seek his remedy by a regular action for a refund of the money alleged to have been overdrawn. *Gasper, Petitioner.* 7th Feb. 1850. 2 Sev. Cases. 513.—Barlow, Colvin, & Dunbar.

ASSIGNEE.—See INSOLVENT, 2, 3.

ASSIGNMENT.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.

I. IN THE SUPREME COURTS.

1. An adjustment by a Puisne Judge of the Supreme Court at Madras, of the sum "equal to the amount of six months' salary," directed by the 6th Geo. IV. c. 85, to be paid to the "legal personal representatives" of such Judge, in case he shall die in and after six months' possession of office, is a valid assignment, being a vested contingent interest in such Judge; and not being payable during the lifetime of the Judge, is not an assignment of salary within the 5th & 6th Edw. III. c. 16. and the 49th Geo. III. c. 126.; and therefore contrary to public policy. *Arbuthnot and others* v. *Norton.* 9th Feb. 1846. 5 Moore 219. 3 Moore Ind. App. 435.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

2. A party may sue on a deed of assignment executed in liquidation of a debt, when he declares and puts in issue that he lent the money for which such assignment was given, though the names of others were used in the transaction, and they had not indorsed the assignment in his favour. *Nund Coomar Raee and others* v. *Radhanath Raee and others.* 1st Nov. 1849. S. D. A. Beng. 418.—Dick, Barlow, & Colvin.

ATTACHMENT.

I. GENERALLY, 1.
II. WHAT PROPERTY MAY BE ATTACHED, 8.
III. WHAT PROPERTY MAY NOT BE ATTACHED, 16.
IV. ALIENATION OF PROPERTY UNDER ATTACHMENT, 24.
V. ILLEGAL ATTACHMENT, DAMAGES FOR.—See ACTION, 93, 94.

I. GENERALLY.

1. The attachment by order of the Civil Courts of a *Patni Talook* does not affect the rights of the *Zamíndár* to levy his rent by sale. *Muthoor Mohun Mitter* v. *Bindrabun Chunder Udhekari.* 26th Oct. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 86.

2. Attachment of property by a rival decree-holder, brought to sale by other decree-holders, will entitle him to a proportionate share of the proceeds of such sale. *Lakhimani Dasi and others, Petitioners.* 13th Feb. 1849. 2 Sev. Cases, 447.—Jackson.

2*a*. A claim, preferred only on the day of sale, to a rateable share of assets realized by a sale of property attached by decree-holders, the claimants being also decree-holders, but not having taken any steps for the attachment and sale of the property in satisfaction of their decree, was rejected under the Circular Order No. 42, of the 26th Jan. 1844. *Anund Mye and others, Petitioners.* 10th March 1847. 2 Sev. Cases, 371. 1 S. D. A. Sum. Cases, Pt. ii. 93.—Tucker.

2*b*. Under the Circular Order No. 42, of the 26th Jan. 1844, a

suing out of attachment is essential to a decree-holder being permitted to share in the proceeds of sale. *Ram Loll, Petitioner.* 18th May 1847. 1 S. D. A. Sum. Cases, Pt. ii. 101. —Tucker and Hawkins.

2 *c.* To give a title to share in the proceeds of sale rateably, the claimant under a decree must take out process of attachment previous to the sale of the property made by the decree-holders. *Daud Mullic Fredoon Beglar, Petitioner.* 19th March 1849. 2 Sev. Cases, 467.—Jackson.

3. *A* obtained a decree against four defendants, and *B* obtained a decree against three of them. The property of all four was sold in execution of both decrees. The fourth defendant sued to set aside the sale, on the ground that he was not a party to the suit instituted by *B*, and on other grounds, and obtained a judgment in his favour. Held, that this judgment did not in any way affect an attachment under Sec. 5. of Reg. II. of 1806, taken out by *A*, whilst the suit was pending, against the property of such fourth defendant. *Sunder Sahee, Petitioner.* 6th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 108.—Hawkins.

4. The provisions of Reg. III. of 1818 are applicable only to State prisoners; and where the property of a person had been attached by the Collector by the Magistrate's order, for evasion of criminal process on the part of such person, it was held not to bar the sale of his property in satisfaction of a decree of Court. *Baboo Teelukdharee Singh* v. *Munnoo Lal.* 22d Feb. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 133.—Barlow,

5. In a suit for arrears of rent, the defendants were exonerated from the demand, on the ground, although not urged by them, of illegal attachment of the lands by the plaintiff. *Govind Misr and another* v. *Seetaram Opadhya.* 11th March 1848. 7 S. D. A. Rep. 471.—Tucker, Barlow, & Hawkins.

6. If the Sheriff of Calcutta seize land in execution of a judgment of the Supreme Court, and afterwards sell the land, not having quitted possession between the seizure and the sale, the purchaser has a good title against a party claiming, by virtue of the execution process of a *Mofussil* Court, whose decree was prior in date to that of the Supreme Court, but the attachment not made until after the Sheriff's seizure. *Prosonnath Raee* v. *Hurree Nurain Gosain.* 10th Sept. 1849. S. D. A. Decis. Beng. 385.—Barlow.

7. The appointment of a *Sazáwal* under Cl. 2. of Sec. 18. of Reg. VIII. of 1819 has no reference to the attachment for future rents. *Radhika Chowdhrain* v. *Rainey and others.* 5th Feb. 1850. S. D. A. Decis. Beng. 35.—Barlow, Colvin, & Dunbar.

II. What property may be attached.

8. There is no legal bar to the attachment under Reg. II. of 1806 of the profits of a *Jágír* to meet the eventual judgment in an action for debt.[1] *Lala Hurnerain, Petitioner.* 5th Nov. 1834. 1 S. D. A. Sum. Cases, Pt. i. 1.—D. C. Smyth.

2. Where a guardian had borrowed money to save his ward's estate from sale for arrears of revenue; it was held, that such estate was liable to be attached and sold, in execution of a decree obtained against the guardian, for the payment of the debt. *Juggurnath Sookul, Petitioner.* 10th May 1838. 1 S. D. A. Sum. Cases, Pt. i. 15.—Rattray, Braddon, Hutchinson, & Reid. (Money dissent.)

10. Held, that Sec. 21. of Act XII. of 1841 does not authorize a

[1] Money pensions are exempt from attachment in satisfaction of decrees, the law requiring the stipend to be paid to none but the stipendiaries, and thereby rendering their receipts indispensable as vouchers. See *infra.* Pl. 18. Such is not the case with the profits of eleemosynary grants of land.

Collector in refusing to attach the surplus proceeds of a sale for arrears of revenue in deposit in his office, in obedience to the orders of the Civil Court passed under Sec. 5. of Reg. II. of 1806.[1] *Chonee Lal Sein, Petitioner.* 18th April 1842. 1 S. D. A. Sum. Cases, Pt. ii. 28.—Reid.

11. Government securities cannot be attached whilst in circulation. But they may be attached at the General Treasury, if, when presented there for the payment of interest, they have not been indorsed to a third party. *Jadunath Sandyal and others* v. *Kanakmani Debya.* 28th Feb. 1846. 2 Sev. Cases, 251.—Tucker, Reid, & Barlow.

12. Promissory notes may be attached under Sec. 5. of Reg. II. of 1806, when found in the name of the defendant in the action, or indorsed to such defendant. *Judoonath Sandyal, Petitioner.* 28th Feb. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 76. —Tucker, Reid, & Barlow.

13. *Sed aliter* if indorsed to another party. *Ibid.*

14. An estate only privately divided is not exempt from attachment under Sec. 26. of Reg. V. of 1812. *Muhindur Nuraen Rae and others, Petitioners.* 10th Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 123.—Hawkins.

15. The Collector, as *Málguzár* of a certain *Mauza* purchased at auction by the Government, attached the property of a *Ryot* for rent according to the *Jamabandí* approved by the Settlement Officer under Regs. VII. of 1822 and IX. of 1833. The *Ryot* brought a regular suit to contest the justness of the demand, pleading that he had always paid less than the sum demanded by the Collector, and the Lower Courts decreed in favour of the plaintiff, on the ground that Sec. 10. of Reg. VIII. of 1831 prohibits attachment for rent exceeding in amount the rent paid in the preceding year. Held, on special appeal, that the law quoted was not applicable to the case, as the Section referred to was enacted "in modification of the existing rules regarding *summary suits,*" and only the "summary jurisdiction" of Collectors was restricted thereby, and that there was nothing in that enactment to prevent a *Málguzár* from attaching the property of a defaulting *Ryot* for any sum which he considered legally due to him.[2] *Collector of Jounpore* v. *Ramnewaz Singh.* 2d July 1849. 4 Decis. N. W. P. 207.—Thompson, Begbie, & Lushington.

III. What property may not be attached.

16. An attachment made under the provisions of Cl. 1. of Sect 5. of Reg. II. of 1806, previous to the expiration of the period fixed by the Court for furnishing security, was held to be illegal. *Hume, Petitioner.* 21st Nov. 1834. 1 S. D. A. Sum. Cases, Pt. i. 1.—D. C. Smyth.

17. A reasonable time must be allowed for procuring the requisite

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[1] See Construction No. 1110.

[2] In this case the Court observed—"The alleged defaulter might, on the occurrence of such attachment, proceed against the *Málguzár* either by a summary suit, in which case the law quoted by the Judge would have governed the decision; or by a regular action, in which case the legal right of the *Málguzár* to the amount of the rent claimed would be the point for decision. In the present instance the plaintiff has had recourse to a regular suit, in which the question of right must be tried, and the *Málguzár* answers that he is entitled to collect in the *Mauza*, according to the *Jamabandí* recorded at the Settlement. This is a most important point, and one which has not hitherto been before the Court, except incidentally or mixed up with other circumstances. It is in this case the main point for consideration, and upon the decision will depend whether or not, in the absence of other definite agreement between the *Málguzár* and the cultivator, a settlement *Jamabandí* is the legal rent-roll of a village." The suit was accordingly remanded to the file of the Moonsiff.

security under the provisions of Cl. 1. of Sec. 5. of Reg. II. of 1806 before the property of the defendant can be legally attached. *Hume, Petitioner.* 21st Nov. 1834. 1 S. D. A. Sum. Cases, Pt. i. 2. *Ibid.*

18. Held, that a pension granted by Government is not liable to be attached in satisfaction of a decree of Court, and is payable only to the party to whom Government may have assigned it. *Seraj-oon-Nissa, Petitioner.* 6th April 1839. 1 S. D. A. Sum. Cases, Pt. i. 19.—Tucker & Reid.

19. The profits of the turn of service of a Brahman, officiating at an idol temple, cannot be attached in satisfaction of a decree for a private debt, being received, not for his private use, but for the purposes of the idol-worship. *Mudoosoodun Huldar and others, Petitioners.* 19th May 1841. 1 S. D. A. Sum. Cases, Pt. ii. 10.—Reid.

20. Proof of intention to alienate, and of a refusal to neglect to give security, is requisite, before a Zillah Court can attach the property of a defendant under Sec. 5. of Reg. II. of 1806.[1] *Hurchundur Chowdree, Petitioner.* 31st Aug. 1841. 1 S. D. A. Sum. Cases, Pt. ii. 16.—Reid.

21. The Civil Court cannot stay the sale of a judgment-debtor's property, and cause payment of the debt by the attachment of the same, without the consent of the creditors. *Rajah Dawur-oo-Zaman, Petitioner.* 27th Sept. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 39.—Reid.

22. A forfeited deposit, ordered by the Government to be refunded to the party mulcted, was attached by order of the Civil Court in execution of a decree, but subsequently applied by the Collector to the discharge of Government revenue due on estates, the property of the party to whom the refund was to be made. Held, by the Sudder Dewanny Adawlut, that the Collector had no power thus to set aside the attachment of the Court. *Chytun Churn Sein and others, Petitioners.* 11th July 1843. 1 S. D. A. Sum. Cases, Pt. ii. 51.—Court at large.

23. Attachment of property to secure the execution of eventual judgment, on other grounds than those set forth in Cl. 1. of Sec. 5. of Reg. II. of 1806, is illegal. *Bipeen Beharee Ghose, Petitioner.* 27th Sept. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 120.—Hawkins.

IV. Alienation of Property under Attachment.

24. The plaintiffs held money decrees against one *A*, and took out execution against his property, which was attached. The defendant pleaded a private sale to himself. The sale was stopped, and the plaintiffs referred to a regular suit to prove the liability of the property for the debts of *A*. This suit was brought accordingly, and decided in favour of the plaintiffs by the Principal Sudder Ameen, who found that the sale was a fictitious transaction to defeat the claims of the plaintiffs. The Sudder Dewanny Adawlut, for the same reasons, confirmed the decree of the Lower Court, notwithstanding that the attachment under Reg. II. of 1806, which had been applied for, had not been actually issued. *Baboo Odyet Narain Sing* v. *Juggomohun Dass and others.* 8th Jan. 1844. 7 S. D. A. Rep. 147.—Rattray, Tucker, & Barlow.

25. A defendant may legally alienate his property *pendente lite,* unless the usual proclamation of attachment has been issued under the provisions of Sec. 5. of Reg. II. of 1806. *Baboo Baghwan Lal, Petitioner.* 26th Feb. 1846. 2 Sev. Cases, 247.—Tucker, Reid, & Barlow.

26. In a case in which a Principal Sudder Ameen ordered the attachment of a share in certain shops and mercantile establishments, under Sec. 5. of Reg. II. of 1806,

[1] See Construction No. 190.

he was instructed to limit himself to the issue of notices forbidding alienation. *Mt. Parbuttea Dossea and others, Petitioners.* 25th May 1847. 1 S. D. A. Sum. Cases, Pt. ii. 102. —Tucker & Hawkins.

27. Alienations of property *pendente lite* by a defendant are valid, unless process of attachment under Reg. II. of 1806 has issued in the usual form. *Pursun Ram and others* v. *Mohummud Tukee Khan and another.* 26th June 1848. S. D. A. Decis. Beng. 591.—Rattray, Dick, and Jackson.

27*a.* But if the alienation be made after it has been actually proclaimed for sale in execution of a decree, it is void. *Ibid.*

28. It is unnecessary to inquire into claims to property before issuing proclamation in bar of its alienation under Reg. II. of 1806.[1] *Maharaja Hetnuraen Singh, Petitioner.* 21st Aug. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 145. 3 Sev. Cases, 37.—Hawkins.

28*a.* In a case where the plaintiff had established the intended alienation of the property of the defendant; it was held, that security must first be demanded, and, if not given, alienation of the property forbidden, by issuing proclamation of attachment. *Ibid.*

29. The mere filing in Court a list of property for sale in execution of a decree, no attachment having been applied for, is not of itself sufficient to render subsequent alienation of such property illegal. *Sheikh Imauth Buksh and others* v. *Sheochurn Sahoo and others.* 30th Jan. 1850. S. D. A. Decis. Beng. 9.—Barlow, Colvin, & Dunbar.

[1] But the claims of opposing parties should be inquired into, should a sale of the property be applied for in execution of the decree. In a subsequent case, *Prankrishn Das, Petitioner,* 26th Sept. 1850, it was unanimously held, by Messrs. Colvin, Barlow, & Jackson, that the law as laid down in the above case of *Maharaja Hetnuraen Singh* was correct. 3 Sev. Cases 38.

ATTENDANCE OF WITNESSES.—See Evidence, 39 *et seq.*

ATTESTATION.—See Evidence, 9. 48, 49.

AUCTION.—See Sale, *passim.*

AUMEEN.—See Ameen, *passim.*

AVAK.—See Insurance, 4.

AWARD.—See Arbitration, *passim.*

BÁ FARZANDÁN.—See Lease, 13.

BAHÍ KHATA.—See Evidence, 86*a.* 87. 90, 91.

BAILIFF.—See False Imprisonment, 1.

BANKER'S BOOKS.—See Evidence, 84. 87.

BASTARD.

I. Generally, 1.
II. Grant to.—See Grant, 1.
III. Inheritance of.—See Inheritance, 5. 30.

1. *Generally.*

1. A guardian, appointed under the will of the putative father of an illegitimate child, has no claim to possession or custody of such child as against the mother. *Mt. Shahjehan Begum* v. *Munro.* 14th Feb. 1850. 5 Decis. N. W. P. 39.—Tayler, Begbie, & Lushington.

2. The mere fact of cohabitation,

by the mother of an illegitimate child, with the putative father, does not of itself constitute such a decree of immorality as would justify the Court in removing the child from her custody. *Ibid.*

BAY BIL WAFÁ.—See MORTGAGE, *passim.*

BENÁMÍ.

I. GENERALLY, 1.
II. FARZÍ.—See FARZÍ, 1.

1. *Generally.*

1. A *Benámí* purchase of a *Patní* tenure by a defaulting *Patnídár* is invalid, according to Sec. 9. of Reg. VIII. of 1819. *Anund Moy Dutt* v. *Ramjoy Mundul and others.* 3d July 1847. S. D. A. Decis. Beng. 313.—Tucker, Barlow, & Hawkins. *Kishen Chunder Neogee* v. *Doorga Churn Shoor and others.* 31st July 1847. S. D. A. Decis. Beng. 380.—Tucker, Barlow, & Hawkins.

2. A suit will lie on a *Benámí* bond, where it is alleged by the plaintiff, and admitted by the party whose name appears in the bond as the lender of the money, that the amount was actually advanced by the plaintiff, although the name of the other party was used in the bond. *Rammohun Surma and another* v. *Shib Sunker Sein.* 23d May 1850. S. D. A. Decis. Beng. 222.—Dick, Jackson, & Colvin.

3. The Circular Order No. 29 of July 29th, 1809, does not apply to suits in which the plaintiff states that he is the *party bonâ fide* interested in the property claimed, though he made the purchase of it in the name of another. *Sibchunder Kur* v. *Nund Gopal Mullick and another.* 30th Dec. 1850. S. D. A. Decis. Beng. 605.—Dick, Barlow, & Colvin.

4. If the *bonâ fide* interest in a purchase is with a party, though effected in the name of another, his title is good. *Ibid.*

BHAOLI.—See EVIDENCE, 17.

BILL.

I. IN EQUITY.—See PRACTICE, 12 *et seq.*
II. AMENDMENT OF BILL.—See AMENDMENT, 1 *et seq.*
III. BILL OF SALE.—See EVIDENCE, 21.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 9.

1. *A* & *Co.* draw and indorse a bill of exchange, adding to their signatures the word "agents," and, in the margin of the bill, the words "Santipor Sugar Concern." Held, that *A* & *Co.* were personally responsible. *Malcolm and others* v. *Smith and another.* 9th Feb. 1848. Taylor, 283.

2. Assumpsit on post bills in the following form: — "Debit Union Bank Post-bill Account, Union Bank Post-bill Co.'s Rs.10.000. At 60 days sight, &c., we promise to pay on account of the proprietors of the Union Bank to the order of Messrs. *A*, *B* & *Co.* Rs. 10.000.—*C* & *D*, Directors." The above was directed to the Secretary, and countersigned by the Deputy-Secretary. Held, that the note was in form a note of the Union Bank, and not of the parties signing. — *Braddon and others* v. *Abbott.* 30th March 1848.—Taylor, 342.

3. The partnership deed of the Union Bank limited its paper circulation; the deed, however, had been constantly violated in this respect. Held, that as issuing Post-bills came within the scope of the ordinary business of the Bank, a *bonâ fide* holder for value of Union Bank-post bills without notice (even in the absence of evidence of usage) was bound only to consider the apparent authority of the Bank to issue them, and was not affected by excesses of authority arising out of violations of the partnership deed. *Ibid.*

4. The drawers of a bill of exchange signed as "*A* & Brothers, Secretaries, India Insurance Co.," and indorsed it simply "*A* & Brothers." Held, that it was the bill of *A* & Brothers, and not of the Company. *Weinholt and another* v. *D'Souza and others.* 5th Jan. 1849. 1 Taylor & Bell, 1.

5. A bill of exchange was directed to "*B, C* & *Co.* agents to the India Insurance Co.," and accepted by them in the same form; but *B, C* & *Co.* had no authority to accept bills in the names of the Company. Held, that the Company were not bound by the acceptance. *Ibid.*

6. By a resolution at a meeting of an Insurance Company the Secretaries were authorised to draw bills on the Company's agents in London for a certain sum of money not authorised by the Company's deed, and thereupon the Secretaries drew bills for that amount upon the London agents. Held, 1st. That the agents were not authorised to accept bills so drawn upon them by the Secretaries to the Company, and, 2dly, that shareholders who were not present at the meeting were not liable upon those bills. *Ibid.*

7. And semble, that even those shareholders present were not liable. *Ibid.*

8. Where a bill is paid by an acceptor before it is due, he is liable to pay it again at the due date to a *bonâ fide* holder for value.[1] *Dallas* v. *Roghoobur Dyal and others.* 26th Nov. 1849. 1 Tayler & Bell, 111.

II. In the Courts of the Honourable Company.

9. An action by an intermediate holder of a *Hundí* for the recovery of its amount will lie, without including, as a defendant, the party on whom the *Hundí* is drawn. *Rungee Lal and another* v. *Ramgopal and others.* 16th Aug. 1848. 3 Decis. N. W. P. 284.—Cartwright.

10. *A* transmitted an order, drawn in *A*'s favour, for certain monies, to *B*, through *C*, *B*'s partner in trade, for the purpose of getting it cashed; *C*, in his letter of instruction to *B*, specially directed him to forward the amount of the bill by an order or *Hundí*. Instead of this, *B* received the money, and transmitted the amount to *C* in Bank notes, which never came to hand. *A* sued *B* and *C* for the amount; and it was held, that as *B* neglected to act in conformity with the special instructions sent to him by *C*, *B* alone was legally liable to *A* for the amount. *Vadamalay Conan* v. *Ramasamy Pillay.* 31st Oct. 1849. S. A. Decis. Mad. 96.—Hooper & Thompson.

11. A promissory note having been granted and signed by *A* and *B*, the mere circumstance of *B*'s name not being in the *Tauzí* of the Collector, as manager of the estates for which the debt was incurred, and of his name not appearing in certain accounts, out of the settlement of which the note arose, are not sufficient to upset the complete authenticity of the note, clearly proved to have been granted for a real consideration; and the omission of the name of *B* in the *Tauzí* was held

[1] See *Da Silva* v. *Fuller*, Chitty on Bills, 148. Byles on Bills, 6th Edit. 319. *Morley* v. *Culverwell*, 7 M. & W. 174.

not to exempt him from responsibility for the note, as it is notorious that that record contains only the name of such of the managing partners in an estate as are under engagements to Government for the revenue; *B*, moreover, being a relation, and of the same blood as *A*, and consequently a sharer in all ancestral property. *Kasheepershad and another* v. *Bunseedhur and others.* 24th Dec. 1849. 4 Decis. N. W. P. 343.—Begbie, Lushington, & Robinson.

12. A plaintiff, as agent of the payee of a bill of exchange, indorsed the bill over to himself as a set-off in account, and sued the drawer for the amount of the bill. As the plaintiff's power of agency was restricted to indorsing the payee's name for the purpose of discounting and remitting in cash and notes, not for the purpose of negociation generally, his indorsement was held to be illegal. *Mosajee Ibramjee* v. *Sutherland.* 12th Sept. 1850. S. D. A. Decis. Beng. 480.—Dick, Jackson, & Colvin.

BIRT.

1. Where the plaintiff sued for possession of an estate, and denied the existence of any *Birt* tenure in it whatever; it was held, that the mere fact of his having brought his suit for the *whole* estate, and his being unable to make good his claim *to that extent*, did not bar his right to hold *such portion* of the estate as was proved to be free of a *Birt* incumbrance, and otherwise his property. *Thakoorpershad Chund* v. *Umur Mull and others.* 19th Sept. 1848. 3 Decis. N. W. P. 361.—Cartwright.

2. Held, on the ground of a former decision by the Judge of Rungpore, between the same parties, or their ancestors, that the defendants, landholders in Rungpore, were liable to the plaintiff for an amount of *Birt*, or money pension, there being evidence that, by the terms of the decennial settlement, some such pensions were payable by the landholders in that district. *Goureekanth Bhuttacharjea* v. *Nubkishen Raee and others.* 13th June 1850. S. D. A. Decis. Beng. 294.—Barlow, Jackson, and Colvin.

BOND.

I. Generally, 1.
II. Nature and validity, 5.
III. Liability of obligor, 9.
IV. Liability of co-sharers, 20.
V. Proceedings on Bond, 22.
VI. Interest on Bonds.—*See* Interest, 24 *et seq.*
VII. Evidence respecting Bonds. —*See* Evidence, 9.
VIII. As regards Agents and Principals.—*See* Agent, 11, 12, 13. 18.

I. Generally.

1. The terms of a bond being that the lenders should retain possession of a farm until the money should be repaid; it was held, that they, being in possession of the farm, could not claim payment of the money. *Shah Abdool Kurreem* v. *Kunhyah Sahoo.* 19th July 1847. S. D. A. Decis. Beng. 343.—Rattray, Dick, & Jackson.

2. A bond for money claimed was produced and proved, as well as admitted by the defendant, who pleaded that the amount mentioned in the bond (Rs. 37,025) was never paid to him, and that he received 4500 only. The bond was executed in Dec. 1844, and in the June following a power of attorney, which was also produced, in which the bond was distinctly alluded to, with an expressed acknowledgment of its amount having been received in full. Notwithstanding these admissions, the evidence to the payment appearing suspicious, and the lender not being able to prove that the

money was actually in his possession at the time of the asserted payment, the Court decreed only for the sum of Rs. 4500, acknowledged to have been received, with interest and proportional costs. *Syud Inait Reza* v. *Walker*. 25th July 1848. S.D.A. Decis. Beng. 714.—Rattray, Dick, & Jackson.

3. *A*, by the terms of a bond, entered into possession of certain *Inaám* lands rented by *B*, to whom *A* had lent a sum of money, and by a counter agreement bound himself to give back the lands at the end of three years, with any balance that might be due in *B*'s favour. On the adjustment of the accounts certain large payments, alleged to have been made by *A*, during his possession of the lands, to the *Zamíndár*, a *Sirdár*, &c., as presents on births and marriages, and for which he claimed to be credited, were disallowed, as they were unauthorised by *B*. *Garemella Jugganadhum* v. *Garemella Chinna Auniah*. 29th Sept. 1849. S. A. Decis. Mad. 68. —Thompson.

4. *A* lent a sum of money to *B*, who was the *Gumáshtah* of certain parties in prison, which sum *C* undertook to pay, provided such parties were released, and *C* executed a document to that effect. On this document *A* sued *C*, together with *D*, *E*, and *F*, his sons and co-parceners, for the money lent, with equal interest. *D* alone defended the suit, admitted the execution of the bond to *A*, but denied the receipt of the money. There being evidence of the delivery of the money to *B*, and *D* having acknowledged the execution of the bond by *C*, his undivided father, by which he took the debt of *B* on himself, the Court awarded to *A* the sum sued for, with interest and costs.[1] *Sahucar Atibalasing and others* v. *Gandaram Lingareddy*. 27th Oct. 1849. S. A. Decis. Mad. 86.—Thompson.

II. Nature and Validity.

5. *A* executed in favour of *B* and *C* an instalment bond for a certain sum, being the adjusted balance then due to *B* and *C* for previous advances: the heirs of *B* and *C* claimed a balance due on the said bond, with interest thereon. The bond was admitted, and payments on it had been made, and entered on the back of the bond, but *A*'s son refused to pay the balance due, on the ground that the instalment bond amounted to the sum entered in it only by the accumulation of excessive interest on sums previously due by *A*. The Court held, that this could not be called in question, and that the instalment bond was made on the adjustment of accounts, and was to be looked upon as a new obligation incurred by *A*. *Ishurchunder Surma Chowdry* v. *Sheopershad Dhur and others*. 22d Feb. 1845. S. D. A. Decis. Beng. 32.—Gordon.

6. *A*, the *Nawáb* of Dacca, executed a bond in favour of *B* for clothes and other articles purchased by him for the *Nawáb*: *B* sold the bond to *C*, who sued *A* for the amount. It being alleged, however, that the *Nawáb* was always in a state of intoxication, and it being proved that he was entirely in *B*'s hands, and was, in fact, drunk when he executed the bond, the suit was dismissed as collusive between *B* and *C*. *Muddunmohun Chund* v. *Ghazeeoodeen Mohumud and an-*

[1] There was nothing in the document to shew that *A* undertook to obtain the release of the prisoners, or to exert himself in their favour, and the Court considered that the condition, that *C* was to discharge the amount, only in the event of the prisoners returning to their village, was owing to *C*'s fear that if the prisoners were not released from jail, their *Gumáshtah* would have no means of repaying the money, or would be less ready to discharge the debt.

other. 24th Feb. 1845. S. D. A. Decis. Beng. 34.—Gordon.

7. A discrepancy between the amount entered in a bond payable by instalments, and that in the statement of instalments to be paid, as written in the bond, was held to be immaterial, the amount entered in the bond being recoverable though in excess of that in the statement. *Anund Chunder Ucharj* v. *Chundra Bullee Debeeah Chowdrain and another.* 3d Feb. 1847. S. D. A. Decis. Beng. 33.—Reid, Dick, & Jackson.

8. Payments on account of a debt on bond are to be first carried to the interest account. *Ibid.*

III. Liability of Obligor.

9. *A* and *B* jointly gave a bond to *D* for Rs. 4000 alleged to be appropriated by *C* towards the payment of revenue. On the suit of *D* against *A* and *B*, in which *A* pleaded payment to *C*, and *B* did not at all appear to defend, *D* obtained a decree. *A*, who was referred to a regular action, sued *B* (who had jointly signed the bond to *D*) and *C* who had appropriated the money. The Principal Sudder Ameen, considering the evidence adduced by *A* to be quite sufficient to establish his claim, decreed it against *C*, and released *B*. On the appeal of *C* to the Sudder Dewanny Adawlut, on the ground that he was not a party to the bond, and of *A*, because *B*, who had jointly signed the bond with himself, had been released; it was held, that the payment of the money claimed by *A* against *C* could not be enforced in the absence of any writing between the parties, but that *B* was liable for a moiety of the bond that he, jointly with *A*, had executed to *D*; and the Court accordingly ordered him to pay it to *A*, who had satisfied the decree of *D* previously passed against him (*A*) and *B* in the case of *D. Jagateswaree Debyah Chaudhurani and another* v. *Bhairubchandra Chaudhuri.* 26th June 1844. 2 Sev. Cases, 37.—Dick, Gordon, & Reid.

10. A bond was drawn up in the names of *A*, *B*, and *C*, and bore the impressions of their seals respectively as parties to its execution; but it appearing that the debt was contracted by *A* alone, and that *B* and *C* neither participated in the money advanced to *A*, nor consented to their names being impressed on the deed for the amount of which they were sued jointly with *A*, a decree was passed in favour of the obligee against *A* alone, and *B* and *C* were exempted from all further responsibility. *Gopal Das* v. *Khajeh Rusool Khan and others.* 28th Jan. 1845. S. D. A. Decis. Beng. 14.—Rattray.

11. An action on a bond was brought one month and nine days before the amount due on the bond was payable. The amount was due seven days after the defendant filed his answer acknowledging execution of the deed. Held, that in equity the obligor could not be allowed to avail himself of the plea that the bond had not arrived at maturity, or to claim a nonsuit.[1] *Rampersad Ray* v. *Gobrad Chunder Baboo.* 28th April 1845. S. D. A. Decis. Beng. 136.—Tucker, Reid, & Barlow.

12. In a suit for a debt on bond, one of the defendants in the Sudder Ameen's Court and three in the Judges' Court had confessed judgment. The plaintiff's claim was, however, dismissed in both Courts, on the ground that the bond was not a true one and was not executed by the defendants. Held, on special appeal, by the Sudder Dewanny Adawlut, that a decree must nevertheless issue against the four defendants who admitted the justice of the plaintiff's claim in the Lower Courts. *Bhooabul* v. *Ramsuhay and others.* 14th July 1846. 1 Decis. N. W. P. 79.—Thompson, Cartwright, & Begbie.

13. *A* sued to recover a sum of

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[1] And see the case of *Mohunt Runjeet Geer* v. *Kunhya Lal.* 3 S. D. A. Rep. 68.

money due on a bond executed to him by *B*, who therein pledged certain property as a security for the debt. Held, that *A* had a lien on such property which would be recognised by the Courts. *Hydur Buksh* v. *Gholam Nubee*. 9th Dec. 1847. 2 Decis. N. W. P. 382.—Begbie.

14. A bond executed jointly by a major and a minor, in favour of minors, was held to be valid so far as regarded the liability of the major, and of the property pledged for the satisfaction of the bond debt. *Mt. Buhojee* v. *Baboo Lall.* 7th Jan. 1848. 3 Decis. N. W. P. 12.—Tayler, Cartwright, & Begbie.

15. Where a Hindú had disinherited his son, but had afterwards restored his son to his confidence, and entrusted him with the management of his property, and, after his death, the son performed his funeral obsequies; it was held, that the son was not thereby excluded from the inheritance: and in a suit against the son and grandsons (who alleged that their grandfather had, after disinheriting their father, left the family estate to them) for money due on certain bonds executed by the son, the estate was held to be liable for the debt. *Mt. Jye Koonwur* v. *Bhikaree Singh and others.* 15th April 1848. S. D. A. Decis. Beng. 320.—Tucker, Barlow, & Hawkins.

16. *A* lent Rs. 2000 to *B*, *C*, and *D*, in two separate sums, taking a separate bond for each; she then went to Benares, and, on her return, was informed that her three nephews, *E*, *F*, and *G*, had realized the money by a purchase they had made of an indigo factory from *B*, the amount due to her having been deducted from the purchase-money. Nevertheless, she called upon *B*, *C*, and *D* to repay the money they had borrowed from her, when the three nephews came forward and acknowledged having received the amount, and promised to make it good, and did then pay Rs. 200, that is 100 in part of each bond. Receiving no more, she subsequently instituted a suit for the balance due on the first bond against *B*, *C*, *D*, *E*, *F*, and *G*. The Principal Sudder Ameen decreed against *E*, *F*, and *G*, and on an appeal the Judge amended his decision, and decreed against both the original borrowers and the three nephews. *E* preferred a special appeal, which was dismissed with costs, the Court holding that *E*, *F*, and *G* were liable, they having received credit for the amount in payment of the factory, and having paid a portion of the debt to *A*. The joint liability of *B*, *C*, and *D* was not before the Court, as they did not prefer a special appeal against the Judge's decision. *Muthoornath Mookerjee* v. *Sree Hurree Banerjee and others.* 15th July 1848. S. D. A. Decis. Beng. 689.—Tucker, Barlow, & Hawkins.

17. Where the obligor acknowledged, in the presence of witnesses, the receipt of the money lent on his bond, it was held, that he was liable for the amount, though, in fact, no money was actually paid to him at the time of his making over the bond to the obligee or afterwards. *Sheikh Mohumed Mehdee* v. *Punna Lall.* 26th July 1848. 3 Decis. N. W. P. 250.—Tayler, Thompson, & Cartwright.

18. *A*, a Hindú minor, executed a joint bond with his brother-in-law *B* to *C*. *A* and *B* lived jointly for several years after the document was written, and then separated: at the time of separation *A* was of age, but made no objection to the bond. *B* afterwards died, and *C* sued *A* for the principal and interest due on the bond. The Sudder Adawlut held, that *A* was exempted from all liability, and decreed that the amount sued for, together with the costs, should be recovered from the sale of any estate belonging to *B* that might be forthcoming. *Yerlagudda Ramasawmy* v. *Guddum Lukshmanna.* 2d July 1849. S. A. Decis. Mad. 6. —Thompson & Morehead.

19. The amount of a bond having

been actually received by the borrower, its subsequent deposit with a third party will not affect the responsibility of the borrower under the bond. *Rammohun Surma and another* v. *Shib Sunker Sein.* 23d May 1850. S. D. A. Decis. Beng. 222.—Dick, Jackson, & Colvin.

IV. Liability of Sharers.

20. A bond executed by guardians for themselves and their wards to save their joint estate, was not allowed to be voided on plea of minority by the latter. *Hurchurn Lookul* v. *Gunga Purshad and another.* 19th June 1848. S. D. A. Decis. Beng. 551.—Rattray & Jackson.

21. Where a bond had been executed by *A*, the deceased *Karnaven* of some of the defendants and the brother of others; it was held, that the defendants were liable, it not being necessary for the head or other member of a *Tarwaad*, who may have the management of the property, to obtain the consent of all or any of the other members to sign a bond; and as they, moreover, having taken possession of the deceased's estate, had made themselves responsible for the debts he had incurred in such management. *Chowcaren Orkattery Coonhy Ahmond and others* v. *Narsimmajee Mookhtar.* 16th July 1849. S. A. Decis. Mad. 17. —Morehead.

V. Proceedings on Bond.

22. *A* gave a *Tamassuk* of Rs. 3000 to *B*, with an assignment of certain bonds and judgments due to the estate of her deceased son *C*, to which *A* had succeeded, and executed a *Mukhtár námeh* to *D* to appropriate the proceeds to the payment of her debt, with a proviso that a failure in *D* to do so would qualify *B* to proceed herself in the recovery of her demand. *A*, in executing a decree against *E*, a judgment creditor of the estate of *C*, petitioned the Principal Sudder Ameen to pay her a tenth of the proceeds and a sixth to *B*, and then, dropping the matter and colluding with *F*, another judgment creditor, applied to the Principal Sudder Ameen to act upon a *Kistbandí*, which *A*, *D*, and *F* produced. This was opposed by *B*, but upheld by the Principal Sudder Ameen by an order of the Court. On the suit of *B* against *A*, *D*, *E*, *F*, *G*, and twelve others, for the recovery of Rs. 3996. 2 Annas 9 Pice, principal and interest, *A* admitted the execution of the *Tamassuk*, which *G* flatly denied, and *D* and others did not appear. The Principal Sudder Ameen decreed the case, with costs, against *A*, and absolved the rest from the claim, but charged costs incurred by *G* to *B*, who now appealed to the Zillah Judge, and got a decree against *A* and *G* jointly. On a special appeal of *G* to the Sudder Dewanny Adawlut; it was held, that the liability of *G* could not be sustained in the absence of documentary evidence to establish the claim of *B* against *G*, and the decision of the Zillah Judge was accordingly reversed, with costs of both Courts against *B*, and *G* was exonerated from the claim. *Mungul Sein* v. *Gobindeebeebee.* 24th April 1843. 2 Sev. Cases, 87.—Rattray, Tucker, & Barlow.

23. *A* held a bond executed in his favour by *B*, who held another bond for a larger amount executed in his favour by *C*. *A* regarding the latter as a safer instrument than the one he held, paid the difference between the two accounts, cancelled *B*'s bond, and took from him in payment of his debt the bond executed by *C*. *A* brought an action against *C* to substantiate the validity of his bond, which *C* denied, and to enforce payment, making, by way of precaution, *B* a party to the suit. Held, that such action is maintainable. *Dowlut Konwur* v. *Bishun Suhaee*

Singh and another. 24th June 1845. S. D. A. Decis. Beng. 203.—Rattray.

24. *A* claimed money from *B*, due on a bond executed by him in favour of *C*; *C*'s heir came forward and renounced any claim on the bond, the money having been actually lent by *D*, *C*'s master. *A* did not prove any transfer of the bond from *D* to him; and such neglect to prove his title, as *B* denied the bond generally, was held to be fatal to his claim. *Wise* v. *Raj Kishen Chuckerbutty.* 17th June 1846. S.D.A. Decis. Beng. 226.—Tucker, Reid, & Jackson.

25. A suit on a bond, alleged to have been executed by *A*, brought against the heirs of *A*, and *B*, who was stated to have been the security for the repayment of the loan, was dismissed, it appearing that *A* had not borrowed the money nor executed the bond, *B* being, in fact, the principal; but right was reserved to the plaintiff to bring a fresh action against *B* the principal. *Mooftee Fuzl Imam* v. *Mt. Nickee.* 19th Dec. 1846. 1 Decis. N. W. P. 273. — Thompson & Cartwright. (Tayler dissent.)[1]

26. In a suit for a debt on bond, the cause of action commences from the date of the bond becoming due, and not from the date of the bond. *Kooshyedas Bose* v. *Bamasoondri Dasi and another.* 16th Jan. 1847. S. D. A. Decis. Beng. 10.—Tucker.

27. A claim on a bond, declared to be *genuine*, and *given by the defendant*, cannot be rejected, as not *legally* enforcable, on the ground that such bond was not accordantly attested by the plaintiff's witnesses on material points. *Bunseedhur* v. *Khooshalee Ram.* 22d May 1847. 2 Decis. N. W. P. 147.—Begbie.

28. In a suit on an instalment bond, it was held to be irregular for the Judge to decree the payment of instalments which had not become due. *Gouree Shunker and others* v. *Bindrabun Doss and others.* 9th Aug. 1847. 2 Decis. N. W. P. 231. —Tayler, Begbie, & Lushington.

29. Where the only consideration professed to have been given for a bond was the settlement of particular accounts, the mere allegation in the bond of the accounts having been settled was held not to be sufficient to sustain an action, on the ground, amongst others, of the accounts not being produced. *Syud Enayut Reza and another* v. *Rajah Enayut Hossein.* 24th July 1849. S. D. A. Decis. Beng. 297. — Colvin & Dunbar. (Barlow dissent.)[2]

30. *A fortiori*, a bond, which does not even profess any production and settlement of accounts, and for which no consideration is proved to have been given, cannot be admitted as valid. *Same* v. *Same.* — Barlow, Colvin, and Dunbar.

31. A suit for a money debt on a bond cannot be sustained on an instrument which provides only for the transfer of the usufructuary possession of land, in repayment of a money advance. *Mt. Jhanoo Bibi* v. *Nubokishen Ghose.* 14th March 1850. S. D. A. Decis. Beng. 44.— Dick, Barlow, & Colvin.

32. *A* executed a bond to *B*, whose heir transferred it to *C* for a valuable consideration. Held, that

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[1] Mr. Tayler thought that the Judge should have passed a decree against *B* for the whole sum, and not have referred the plaintiff to a fresh suit.

[2] Sir R. Barlow was of opinion that the burthen of proof that there were no accounts settled, as alleged by the defendants, rested with them, and that the adjustment acknowledged in the bond relieved the plaintiff from establishing his pleas in the first instance. He referred to the case of *Sreenarain Rai* v. *Bhya Jha.* 2 S. D. A. Rep. 23, affirmed on appeal by the Judicial Committee of the Privy Council in *Rajinder Narain Rae* v. *Bijai Govind Sing.* 2 Moore Ind. App. 181; and to a Bombay case, *Ramchunder Unoopram* v. *Bhugwan Mansing.* Sel. Rep. 12.

C was entitled to sue *A* for the bond debt, although the transfer and substitution had been made without the consent of *A*. *Bundi Narasareddy* v. *Patnum Parareddy and another*. 28th March 1850. S. A. Decis. Mad. 20.—Hooper, Thompson, & Morehead.

33. In a claim on an instalment bond for the amount of the instalment, it is not necessary to prove when and what sum was originally advanced. *Hubeeb Shah* v. *Kasheenath Raee*. 14th Aug. 1850. S. D. A. Decis. Beng. 400. —Jackson & Colvin.

34. But if the claim, under the same bond, were for the *original debt*, then proof, either of the original bond, or the accounts connected with it, would be required. *Ibid.*

BOUGHT AND SOLD NOTES.
—See Notes, 1.

BOUNDARY.

1. A party claiming lands as belonging to a village appertaining to a certain *Pergunnah* must shew what is the boundary of the *Pergunnah*, if such boundary be doubtful; and until this be determined, his claim cannot be admitted. *Mungul Sing* v. *Onrait*. 30th June 1845. S. D. A. Decis. Beng. 215.—Rattray, Tucker, & Barlow.

2. A boundary dispute is not cognizable by a Collector under Reg. II. of 1819. *Modoosoodun Lushkur* v. *Muddeen Mohun Khan and others*. 20th May 1847. S. D. A. Decis. Beng. 164.—Hawkins.

3. In a suit for possession of lands, giving rise to the question of boundaries, the latter should be ascertained before judgment is entered, and not left for after determination. *Mohummud Fyaz and others* v. *Suzeena Beebee and others*. 11th Aug. 1847. 7 S. D. A. Rep. 379.—Barlow. *Sheikh Boodhoo and others* v. *Surroop Chunder Bose and others*. 31st May 1848. S.D.A. Decis. Beng. 486.—Tucker.

4. In a suit to ascertain the boundaries between village *A* and village *B*, a map was prepared, and was adopted by the decree, which embraced not only the boundaries between *A* and *B*, but likewise between *A* and a third village *C*, which were not then in dispute. A suit being afterwards brought to ascertain the boundaries between *A* and *C*, it was held (though the parties to both suits were the same) that the former decree was binding only as to the immediate point at issue in the former suit, and that as the laying down any boundaries between *A* and *C* was surplusage, it did not preclude a full investigation in the second suit. *Rooderpurshad Mookerjee and others* v. *Purushnath Singh Chowdhree and others*. 11th March 1848. S. D. A. Decis. Beng. 184—Tucker, Barlow, & Hawkins.

5. The boundaries mentioned in a decree, and not the exact quantity by subsequent measurement, indicate the identity of the lands, of which possession is to be given to a decree holder. *Mohunt Nuraen Doss, Petitioner*. 19th June 1848. 1 S. D. A. Sum. Cases, Pt. ii. 142.—Hawkins.

6. Where a claim is for an entire *Maháll*, with a specified exception as to a certain number of *Bíghás* occupied by a homestead, the nature and extent of the lands claimed are sufficiently precise, so as to bar a nonsuit, although there be not in the plaint a distinct detail of the boundaries of the lands claimed, after deducting the *Bíghás* of the homestead. *Ramchurn Mitter and others* v. *Sreenath Raee and others*. 16th May 1850. S. D. A. Decis. Beng. 207. —Dick, Jackson, & Colvin.

7. On an appeal regarding a disputed boundary the Sudder Dewanny Adawlut will be unwilling to interfere, unless on the strongest and most palpable ground, with a deci-

sion resting on a local investigation by an *Ameen*, and on the map and evidence filed with his report. *Raminder Nurain Raee Adhikaree* v. *Rajah Anundnath and another*. 4th June 1850. S. D. A. Decis. Beng. 256.—Barlow, Jackson, & Colvin.

BREAKING JAIL.—See CRIMINAL LAW, 10.

BRITISH SUBJECT.—See CRIMINAL LAW, 91, 92; JURISDICTION, 3, 4.

BULLUTIDAR.—See DUES and DUTIES, 1.

BUTWÁRÁ.

I. GENERALLY, 1.
II. WHEN SET ASIDE.—See PARTITION, 3.

I. GENERALLY.

1. The *Butwárá* of an estate, partly the property of the Government, and partly of private individuals, must nevertheless be made by the Collector and the Board of Revenue; and it was held, that such *Butwárá* could not be made by a Principal Sudder Ameen, whose order was therefore reversed, and he was directed to issue the usual order to the Collector under Reg. XIX. of 1814, to make the *Butwárá*. *Collector of Mymensing, Petitioner*. 11th March 1844. 1 S. D. A. Sum. Cases, Pt. ii. 57.—Reid.

2. Where a petition to the Collector by a sharer in a joint estate to have his name registered for a specific share in the registry of mutation was not attested by four witnesses, as required by Cl. 2. of Sec. 4. of Reg. XIX. of 1814, and no orders were issued at the time for the deputation of an Ameen for the purpose of effecting a *Butwárá;* it was held, that the estate could not be considered as under *Butwárá*, and that the whole was liable to sale for arrears of revenue. *Kashee Chundur Mookerjeah* v. *Hur Chunder Raee*. 27th Feb. 1845. S. D. A. Decis. Beng. 36.—Reid & Barlow. (Dick dissent.)

3. Sections 4. and 22. of Reg. XIX. of 1814 refer to disputes arising out of a *Butwárá*, and not to disputes which may have arisen independently thereof. *Mohun and others* v. *Ram Buksh*. 15th June 1847. 2 Decis. N. W. P. 183.—Begbie & Lushington.

BYE BIL-WAFÁ.—See MORTGAGE *passim*.

BYE-LAWS.

1. To give bye-laws the force of law, the law must authorise an authority to prescribe rules for the guidance and for the conduct of the subordinates, which bye-laws, when sanctioned by the Government, are declared to have the same force as the law itself.[1] *Nabkishn Fotedar, Petitioner*. 17th March 1846. 2 Sev. Cases, 339. 1 S. D. A. Sum. Cases, Pt. ii. 78.—Court at large.

CAPIAS AD RESPONDENDUM.—See WRIT, 1, 2.

CAPIAS AD SATISFACIENDUM.—See WRIT, 3.

CAST.

1. An expulsion from Cast having been the act of the whole Cast, and being unstamped with malice and violence, is not a subject in which the Courts of Law, under the provisions of Cl. 1. of Sec. 21. of Reg.

[1] See Sec. 2. of Act XVII. of 1841.

II. of 1827, can interfere. *Baee-khooshalee* v. *Toolsee Khanjee and others.* 23d. Sept. 1842. Bellasis, 25.—Full Court.

2. A charge of impurity against a woman, in bar of inheritance, should not be entered upon in a Court of Justice, unless there be proof that she has been excommunicated by her Cast for such impurity. *Mt. Soondur Koonwaree Dibeeah* v. *Gudhadhur Purshad Teewaree.* 23d July 1845. S. D. A. Decis. Beng. 240.—Reid, Dick, & Barlow.

3. Alleged Cast usage cannot take precedence of the written law. *Baee Rutton* v. *Lalla Munnohur.* 4th March 1848. Bellasis, 86.—Bell, Simson, & Le Geyt.

4. Rearing pigs and selling them is not sufficient to justify the expulsion of a Muhammadan from his Cast. *SoonaoollahKoolal* v. *MohussunKoolal and others.* 17th June 1848. S. D. A. Decis. Beng. 541.—Tucker, Barlow, & Hawkins.

5. A *Mehtur* or head man of a class of Muhammadan weavers is not responsible for the default of his fellow weavers in the payment of ground-rent due from them, since, as neither the Government nor its officers recognise him in the office, he is not vested with any authority to compel payments from his brethren, and it would therefore be manifestly unjust to hold him responsible for a default which it was not in his power either to prevent or make good.[1] *Mt. Bishundehee* v. *Doolar.* 30th May 1850. 5 Decis. N. W. P. 100.—Begbie, Deane, & Brown.

6. The headmanship of a fisherman's Cast, being an hereditary office, and not an elective appointment, a claim to such office is cognizable by the Civil Courts. *Karooppana Chetty* v. *Mootoosammy Chetty.* 19th Dec. 1850. S. A. Decis. Mad. 122.—Hooper & Morehead.

[1] In this case the plaintiff alleged that it was the *Mehtur's* duty to collect the tax from his brethren; but no sufficient proof, based either on local usage or specific agreement between the parties, was adduced in support of such allegation, even supposing the claim against his brethren to have been a just one.

CERTIFICATE OF REPRESENTATION.

I. Generally, 1.
II. When Requisite.—See Action, 12; Practice, 134 *et seq.*

I. Generally.

1. Held, that the certificate granted under Act XX. of 1841 to an individual holding Government securities should contain a specification of the paper money which the holder is empowered to negociate. *Shumsun Nissa and another, Petitioners.* 11th Sept. 1848. 2 Sev. Cases, 427.—Court at large.

2. Under Sec. 5. of Act XX. of 1841, the Sudder Dewanny Adawlut directed investigation of the title of the petitioners, who impugned a certificate of representation of the effects of their late uncle as having been obtained fraudulently, and called for a report from the Lower Court for a fresh certificate, if the allegations of the petitioners were proved. *Govindchandra Bose and another, Petitioners.* 2d April 1850. 2 Sev. Cases, 537.—Dick.

CERTIORARI.—See Evidence, 2.

CESSES.

1. The provisions of Secs. 54. & 55. of Reg. VIII. of 1793, do not disallow any impositions which may have been in force prior to the *Faslí* year 1198; they only prohibit the imposition of any new *Abwábs.* *Rajah Madho Singh* v. *Rajah Bidyanund Singh.* 11th May 1848. S. D. A. Decis. Beng. 442.—Rattray.

2. In a suit for balance of rent due; the items *Burdana, Kutwálí* tobacco, *Batta* on Sicca rupees, and again on Company's rupees, were held to

be illegal cesses, and the claim preferred for them contrary to Secs. 54. & 55. of Reg. VIII. of 1793. *Chucken Sahoo and another* v. *Roop Chand Panday.* 15th July 1848. S. D. A. Decis. Beng. 680.—Tucker, Barlow, & Hawkins.

CHAMPERTY.—See ACTION, 30; CONTRACT, 14 *et seq.*; EXECUTION, 3.

CHANDNI.—See DUES & DUTIES, 2.

CHARTER.

1. Held, that the Charter of the Supreme Court at Bombay having been granted by the Crown, by force of an Act of Parliament, must be construed with reference to the powers conferred by the Act, even though the prerogative of the Crown were limited by such construction. *The Queen* v. *Eduljee Byramjee.* 8th April 1846. 5 Moore, 276. 3 Moore Ind. App. 468.

CHARTER-PARTY.—See SHIP, 1. 6.

CHILD-STEALING.—See CRIMINAL LAW, 93.

CHUR.—See EVIDENCE, 19.

CIRCULAR ORDER.

1. Held, by the Calcutta and Western Courts collectively, that the Circular Order No. 83, Vol. III. dated the 8th May 1840, applies to moveable as well as to immoveable property. *Gungerpersaud Ghose, Petitioner.* 13th Sept. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 38.—Court at large.

2. A claim, preferred only on the day of sale, to a rateable share in the assets realised by a sale of property, was rejected under the Circular Order No. 42 of the 26th Jan. 1844. *Anund Mye and others, Petitioners.* 10th March 1847. 1 S. D. A. Sum. Cases, Pt. ii. 93.—Tucker.

3. The plaintiff had obtained a decree for lands in 1838 in a suit instituted by him which did not include a claim for mesne profits. Afterwards, in 1840, in consequence of an illegal valuation of the lands, the judgment was cancelled, and a new disposal of the case directed after a due correction of the error. On re-trial the original judgment was maintained, and, on appeal, affirmed by the Sudder Dewanny Adawlut. In 1842 the plaintiff sued for mesne profits. Held, that as the original suit, for the land only, was instituted prior to the promulgation of the Circular Order of the 11th Jan. 1839, and the Order of 1840 was for a new disposal of the original suit, and not for the institution of a new one, the Circular could not be considered as barring the claim of the plaintiff. *Raee Nund Lall* v. *Shah Kuramut Hosein.* 17th March 1845. S. D. A. Decis. Beng. 56.—Rattray, Tucker, & Barlow.

4. A suit for a portion of a claim, being opposed to the Circular Order of the 11th Jan. 1839, was remanded to admit a supplemental plaint, the petition of plaint having been filed before the issue of the Circular Order.[1] *Bhairub Chunder and others* v. *Nundcomar Mujmodar and others.* 17th Dec. 1845. S. D. A. Decis. Beng. 461.—Reid, Dick, & Jackson. *Mt. Sogra Khatoon* v. *Abdool Ali and another.* 16th June 1847. 7 S. D. A. Rep. 344.—Dick, Jackson, & Hawkins.

5. Held, that the Circular Order

[1] The Circular Order of the 30th Sept. 1847 contains the rule for dealing with similar claims preferred after its date.

No. 29 of the 11th Jan. 1839, was not intended to operate retrospectively. *Raee Nund Lal* v. *Shah Kuramut Hosein.* 17th March 1845. S. D. A. Decis. Beng. 56.—Rattray, Tucker, & Barlow. *Surdha Singh and others* v. *Birj Beharee Singh and others.* 2d Nov. 1846. S. D. A. Decis. Beng. 364.—Rattray, Tucker, & Barlow.

6. But it was afterwards held, that the exercise of discretion in the retrospective application of the provisions of the Circular Order of the 11th Jan. 1839 is not contrary to the practice of the Courts.[1] *Sheobuksh Rae and others* v. *Sheoumber Singh.* 6th Sept. 1847. 2 Decis. N. W. P. 309.—Tayler, Begbie, & Lushington.

7. The Circular Order of the Board of Customs of the 11th July 1835 No. 680, imposing rules of practice upon its subordinates, beyond the requirements of law, cannot be pleaded in bar of a legal penalty. *Nubkishen Fotedar, Petitioner.* 17th March 1846. 1 S. D. A. Sum. Cases, Pt. ii. 78. 2 Sev. Cases, 339. —Court at large.

8. Held, that the Circular Order of the 12th March 1841 has a retrospective effect. *Beychoo Poramanick* v. *Kaleenath Raee and others.* 5th June 1847. S. D. A. Decis. Beng. 199.—Tucker, Barlow, & Hawkins.

9. The Circular Order of the 30th Sept. 1847, as to the mode of laying suits, has no retrospective effect. *Kartik Chundur Banerjee and others* v. *Ramakant Banerjee.* 18th April 1850. S. D. A. Decis. Beng. 126.—Dick, Barlow, & Colvin.

CIVIL COURTS.—See JURISDICTION, *passim.*

[1] In this case the Court remarked—"Whether or no this Circular partakes of the character of a Construction, and has therefore a retrospective effect, is a point on which different opinions might be entertained. Perhaps some paragraphs of that rescript might be received in the one light, and some in the other."

COIN, COUNTERFEITING THE.—See CRIMINAL LAW, 94, 95.

COLLECTOR.

I. GENERALLY, 1.
II. POWERS OF COLLECTORS, 2.
III. LIABILITY OF COLLECTORS, 12.
IV. JURISDICTION AS REGARDS COLLECTORS.—See JURISDICTION, 57 *et seq.*

I. GENERALLY.

1. It is not a sufficient ground for setting aside a summary award for rent by a Collector, that the right to the land was disputed at the time. *Sheikh Buktawur and others* v. *Gunganurain Ghose and others.* 13th June 1849. S. D. A. Decis. Beng. 197.—Jackson.

II. POWERS OF COLLECTORS.

2. It is irregular for a Collector to sell, in execution of a decree of Court, property situated within the fiscal jurisdiction of another Collector. *Sheebpershad Dutt, Petitioner.* 7th Sept. 1841. 1 S. D. A. Sum. Cases, Pt. ii. 16.—Reid.

3. Where a Collector put up for sale, for arrears of revenue, and consolidated into one lot, seventy-four villages, without having obtained the express authority of the Board of Revenue for the sale of such specific lot; it was held, that he had acted contrary to the Regulations, and that such illegal act was not cured by the general authority given previously to the sale, or by the subsequent confirmation thereof by the Board. *Maharajah Mitterjeet Sing* v. *The Heirs of the late Ranee, widow of Rajah Juswunt Sing.* 17th Dec. 1841. 4 Moore, 14. 3 Moore Ind. App. 42.

4. An uncovenanted Deputy-Collector has no authority to resume rent-free lands in a *Málguzárí* estate, purchased by Government at a public

sale for balances of revenue. *Pearee Lal Mundul* v. *Ray Oma Kaunth Sein.* 10th April 1845. S. D. A. Decis. Beng. 109.—Tucker, Reid, & Barlow.

5. A boundary dispute is not cognizable by a Collector under Reg. II. of 1819. *Moodoosoodun Lushkur* v. *Muddun Mohun Khan and others.* 20th May 1847. S. D. A. Decis. Beug. 164.—Hawkins.

6. Under the general powers vested in a Collector by Sec. 22. of Reg. IX. of 1833, it is competent to him to reverse a sale of a *Patní* tenure by a Deputy Collector under Reg. VIII. of 1819. *Kameekunt Chattoorjea, Petitioner.* 25th March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 137.—Tucker, Barlow, & Hawkins.

7. Where it was proved that the appellants had neither paid rent in former years to the respondents, nor had executed a *Kabúliyat* binding themselves to pay; it was held, that the Collector had no jurisdiction to pass a summary decision under Reg. VII. of 1799.[1] *Ram Purshad Dhobey and others* v. *Bibi Munna and others.* 5th Aug. 1848. S. D. A. Decis. Beng. 746.—Tucker, Barlow, & Hawkins.

8. Where it appeared that the plaintiffs had never paid rent to the defendants before the institution of a summary suit; and moreover, that disputes had for a long time existed as to the right of the defendants to demand rent; it was held, that a summary decision obtained by the defendants against the plaintiffs was against the law, the Collector having no jurisdiction under Sec. 10. of Reg. VIII. of 1831. *Gopal Dobey and others* v. *Bibi Munna and others.* 12th April 1849. S. D. A. Decis. Beng. 107.—Dick, Barlow, & Colvin.

9. The provisions of Sec. 4. of Reg. VIII. of 1831 declare the finality of the Collector's summary award *quoad* the existence of a balance, unless that point be contested within one year in the Civil Court under Sec. 16. of he same Regulation. *Jugomohun Mookerjee and others* v. *Kalee Kant Deb.* 12th Nov. 1845. S. D. A. Decis. Beng. 415.—Reid & Jackson. (Dick dissent.) *Joy Kishen Mookerjee* v. *Rajeeblochun Singh and others.* 7th March 1849. S. D. A. Decis. Beng. 54.—Barlow & Colvin. (Dick dissent.)

10. In a suit for the confirmation of a sale made by a Collector in execution of a decree of Court, and afterwards annulled by him on the ground of irregularity; it was held, that the Collector had no authority to annul such a sale, the power being vested by law solely in the Court by which the sale was ordered to be made. *Mt. Hoormutoonnissa* v. *Doolea Dass.* 30th July 1849. 4 Decis. N. W. P. 253.—Thompson, Begbie, & Lushington.

11. Where first the Deputy-Collector, and then the Collector in appeal, both so far admitted the plaintiff, purchaser, to appear and defend the summary suit, as to refer her deed for her agent to appear for her—*i. e.* her *Mukhtár námeh*—to be duly attested by herself; yet before the deed could be returned, duly attested, so as to enable the agent to defend against the suit, both authorities passed decisions against the property. It was held, that such proceedings could not be upheld, as both the person sued, and the purchaser from him, declared the latter to be the person interested in the suit, and that person was ready, and had applied to defend in the suit, and no decision should have been given till she had made her defence. *Hollow* v. *Mohun Mola.* 2d Aug. 1849. S. D. A. Decis. Beng. 318. —Dick, Barlow, & Colvin.

11*a*. A Collector has no authority to annul, by his own act, a settlement for invalid *Jágír* lands made by him, and sanctioned by the Sudder Board of Revenue. *Mt. Soorjao*

[1] See Reg. VIII. 1831, s. 10.

and others v. *Sheo Singh*. 6th June 1850. S. D. A. Decis. Beng. 271. —Barlow, Jackson, & Colvin.

III. Liability of Collectors.

12. A Collector cannot be sued as a judicial officer for any act done under order of the Court, but he may be sued as a revenue officer, where the rights of parties are injured by his acts.[1] *Hill* v. *Hastie and another*. 18th Nov. 1845. 2 Sev. Cases, 305.—Barlow.

13. A Collector is not personally amenable to the Civil Courts for acts done by him under Reg. VIII. of 1831. *Collector of Purneah, Petitioner*. 15th June 1847. 1 S. D. A. Sum. Cases, Pt. ii. 104.—Hawkins.

14. The provisions of Sec. 36. of Reg. X. of 1793 declare a Collector responsible only for any acts done in opposition to the Regulations, or to any order issued by the Court of Wards, or for any breach of trust. This is a *personal responsibility* for infringement of the law; but there is no legal responsibility in a Collector for acts performed under an order of the Court of Wards, and no action, in consequence of them, will lie against him. *Rajah Anundath Raee* v. *Collector of Rajshahye and others*. 17th June 1850. S. D. A. Decis. Beng. 301.—Barlow, Jackson, & Colvin.

15. The personal responsibility resting upon a Collector for illegal acts done in the management of a Ward's estate does not render his successor in office liable to an action. *Ibid*.

COMMISSION.

I. On proceeds of Sale, 1.
II. To examine Witnesses.—See Evidence, 53, 54.

[1] And see the case of *Mir Ali* v. *Raghab Ram Ray*. 18th Nov. 1830. 5 S. D. A. Rep. 72.

I. On proceeds of Sale.

1. *Názirs* of the Zillah Courts have no right to charge any commission on proceeds of sales made under the orders of Court.[2] *Roopnarayn Sein and another, Petitioners*. 26th June 1848. 2 Sev. Cases, 407.—Hawkins.

COMMITMENT.—See Criminal Law, 11, 12; Contempt, 1, 2.

COMPROMISE.

I. Generally, 1.
II. When valid and final, 3.
III. Invalid and inadmissible, 5.

I. Generally.

1. A *Suláh námeh*, or deed of compromise, conveying right to certain lands, though silent as to the mesne profits, was held to imply a right to the latter also. *Mt. Bibi Imamun and others* v. *Mt. Bibi Mujoo and another*. 14th June 1847. 7 S. D. Rep. 341.—Rattray, Dick, & Jackson.

2. A bond is not requisite to prove a compromise. *Fraser* v. *Pearee Soondree Dassee and others*. 8th April 1848. S. D. A. Decis. Beng. 308.—Tucker, Barlow, & Hawkins.

II. When valid and final.

3. Where an appellant sued to cancel a *Suláh námeh*, or deed of adjustment, on which a decree had been given, on the ground that the *Suláh námeh* was collusive; it was held, that such *Suláh námeh* having been duly accepted as good and valid by a competent Judicial Court, and a decree regularly passed thereon, such decree, not having been appealed

[2] See Construction No. 509.

against, became final.[1] *Government Salt Agent* v. *Matadeen Thakoor and others.* 2d Sept. 1845. S. D. A. Decis. Beng. 286.—Dick.

4. By deeds of *Fárikhkhatt* and *Ikrár námeh,* entered into by parties to a suit then pending, a compromise was agreed upon, in consideration of Rs. 2000 to be paid by the defendants to the plaintiff, the plaintiff undertaking to execute and deliver in to the Court, a deed of *Rázi námeh,* which the plaintiff afterwards refused to execute. Held, by the Judicial Committee of the Privy Council, affirming the decree of the Sudder Dewanny Adawlut of Bengal, that the deeds of *Fárikhkhatt* and *Ikrár námeh* constituted a binding obligation on the plaintiff, and that he could not avoid the compromise by refusing to execute and enter up the *Rázi námeh.* *Munni Ram Awasty* v. *Sheo Churn Awasty and another.* 4th Dec. 1846. 4 Moore Ind. App. 114.

III. Invalid and Inadmissible.

5. The Sudder Dewanny Adawlut refused to carry into execution a *Rázi námeh* and *Suláh námeh* by which a compromise had been agreed upon by the parties to a suit, no final decree having been passed, and the value of the stamp for the petition of appeal having been returned.[2] *Raja Mitterjeet Singh* v. *Koor Heyt Nurain Singh.* 16th Nov. 1840, and 16th June 1841. 1 S. D. A. Sum. Cases, Pt. i. 49.—Reid & D. C. Smyth.

6. Where a compromise of rights in a suit for inheritance had been made, and the compromise rested on the act, not of the *Vakíls* of the parties in Court, but of the parties themselves out of Court, and one of the parties did not really take part in such compromise; the mere fact that the deed of compromise had been duly filed and acknowledged by the pleaders of the parties will not make it valid. *Mt. Bama Soondree and another* v. *Nurain Kishoon Singh.* 20th July 1848. S. D. A. Decis. Beng. 701. —Dick.

7. A compromise is inadmissible between parties in a case of execution of a decree, if the decree-holder in it be a judgment debtor in another case, to satisfy the claim against him in which his decree is judicially assigned. *Chowdree Dowlut Singh, Petitioner.* 4th Sept. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 146.—Hawkins.

8. A compromise being equally binding on both parties subscribing to it, if either party withdraw, or fail to fulfil its conditions, the other party also becomes released from his engagement, and each party is restored to original rights. *Kartik Chundur Banerjee and others* v. *Ramakant Banerjee.* 18th April 1850. S. D. A. Decis. Beng. 126.—Dick, Barlow, & Colvin.

CONCEALMENT OF MURDER.—See Criminal Law, 96.

CONDITIONAL RELEASE.—See Criminal Law, 64.

CONFESSION OF JUDGMENT.—See Practice, 329 *et seq.*

[1] The Court observed in this case, that if the applicant deemed the *Suláh námeh* collusive, as alleged, his proper and only course was to apply to the Court which passed the decree on the *Suláh námeh* for a review of judgment, and that no other authority could impugn the judgment.

[2] See Note 4. Art. 10. Sched. B. of Reg. X. of 1829; and see also Circular Order, 20th July 1838, No. 10. of Vol. III., which clearly explains the law in cases of this nature; and Construction No. 208, dated 1st June 1815.

CONFESSIONS.—See Criminal Law, 13 *et seq*; 97 *et seq*.

CONFISCATION.

1. In a case where the Zillah Judge had directed the confiscation of 500 *Maunds* of salt to Government, in consequence of its being proved by weighment of there being an excess by 18 *Maunds* and 14 *Sérs* of the quantity transported by water under a *Rawáneh*, the order of confiscation was confirmed in appeal (preferred by the aggrieved party) by the Sudder Dewanny Adawlut, under the regulations in force. *Nabkishn Fotedar, Petitioner.* 17th March 1846. 2 Sev. Cases, 339. 1 S. D. A. Sum. Cases, Pt. ii. 78.—Full Court.

2. *A*, the proprietor of large ancestral and other estates in Benares, died, leaving a widow and four sons. Shortly after *A*'s death, three of the brothers became implicated in a rebellion against the State. The fourth brother, then a minor, was not concerned in the rebellion. On the suppression of the rebellion, the Government issued proclamations for the parties to appear and answer the charges made against them, but they absconded: the Government thereupon, acting under the provisions of Beng. Reg. XI. of 1796, confiscated the whole of their property, including the ancestral estates, formerly held by *A*. Held, by the Judicial Committee of the Privy Council, on appeal, that such confiscation was regular, and within the meaning of the Regulation, but that the act of Government which divested the three sons of their right and interest in the estates did not affect the rights of the fourth son, who was entitled to his share in all the ancestral estates of *A*, taken by the Government under the forfeiture. It was also held, that the forfeiture did not affect the rights of *A*'s widow, and that she was entitled to maintenance out of the whole estate that was ancestral. *Mt. Golab Koonwur and others* v. *The Collector of Benares and another.* 17th Dec. 1847. 4 Moore Ind. App. 246.

3. The Governor-General in Council has power, under Reg. XI. of 1796, to pronounce an order of confiscation of the property of parties suspected of rebellion who had absconded and failed to appear when summoned. *Same* v. *Same.* 17th Dec. 1847. MS. Notes of P. C. Cases.

4. Semble, When the Governor-General has made a grant to an individual, the whole property so granted to him ought, in case of his delinquency, to be forfeited, without regard to the rights of participation in the property which might belong to members of his family. *Ibid.*

CONSPIRACY.—See Criminal Law, 17. 106, 107.

CONSTRUCTION.

1. Construction No. 318 does not apply to an engagement entered into by a party for the restoration of the value of property entrusted to him. *Bhunjun Mundul* v. *Gobra Mundul and others.* 17th Feb. 1848. S. D. A. Decis. Beng. 94.—Hawkins.

2. Construction No. 588 refers exclusively to cases pending in the Courts. *Sheikh Imaum Buksh and others* v. *Sheochurn Sahoo and others.* 30th Jan. 1850. S. D. A. Decis. Beng. 9.—Barlow, Colvin, & Dunbar.

3. Construction No. 696 does not apply to a case in which no village accounts or proof of payment of rent for the last year have been produced. *Bhola Nath Serma* v. *Luteef Khan.* 28th Nov. 1846. S. D. A. Decis. Beng. 403.—Tucker, Reid, & Barlow.

4. Under Construction No. 813 of 1833 no summary proceeding is admissible in determining periods for the institution of suits under the Law of Limitations. *Rajah Nirbhei Singh*

v. *Buraj Singh and others.* 6th March 1846. S. D. A. Decis. Beng. 97.—Rattray.

5. Construction No. 813 only refers to a miscellaneous application by a plaintiff preferring a claim, and not to the admission of a claim by a defendant. *Watson and Co.* v. *Pursunnonath Rae and another.* 16th Aug. 1847. S. D. A. Rep. 383.—Barlow.

6. Construction No. 868 refers only to cases in which the general point at issue between the parties in appeal is one and the same. *Macpherson* v. *Khaja Gabriel Avietick Ter Stephanoos.* 21st June 1848. S. D. A. Decis. Beng. 563.—Dick, Jackson, and Hawkins.

7. Construction No. 980, which declares the law in regard to the applicability of the rule of Limitation to certain cases, provided for in Secs. 15. 26. 32. and 35. of Reg. XXII. of 1795, cannot be extended to claims under the general law of inheritance. *Kalee Shunker Pal and others* v. *Mt. Phool Mala and others.* 25th March 1848. 7 S. D. A. Rep. 474.—Tucker, Barlow, & Hawkins.

8. Construction No. 1129 is not limited in its application to mesne profits only, as it expressly states, "and other matter in dispute between the parties to the suit, which may be involved in the decision." *Bhugwan Chundur Singh and others* v. *Ram Nurain Mookerjee and others.* 26th April 1848. S. D. A. Decis. Beng. 371. Dick, Jackson, and Hawkins.

9. Constructions 607 and 809, regarding *Mukhtárs,* are inapplicable to the Civil Courts. *Bishen Dyal Singh, Petitioner.* 12th Aug. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 145. —Hawkins.

CONTEMPT.

1. A warrant of commitment contained a direction to the Sheriff to detain a party (for contumacy and contemptuous conduct in the presence of the Magistrate) until the 7th day of May next, at which time he was to be brought up again before the Justices. Held, that the warrant was informal, the imprisonment being for an indefinite period, and in excess of the Magistrate's authority. *The Queen* v. *Hume.* 27th April 1848. Taylor, 368.

2. *Quære,* whether a Magistrate has power to commit for contempt. *Ibid.*

CONTRACT.

I. Hindú Law, 1.
II. In the Supreme Courts, 3.
III. In the Courts of the Honourable Company.
1. *Generally,* 4.
2. *Construction of,* 11.
3. *Illegal Contract,* 14.

I. Hindú Law.

1. *Quære,* whether a contract by a Hindú infant is absolutely void, and whether he may bind himself for necessaries? *O'Donnell* v. *Maha Rajah Buddinauth.* 10th July 1790. Mor. 84.

2. Where a mother hires out her daughter for concubinage, the Civil Courts will not entertain an action for recovery of the wages of her prostitution, notwithstanding the provisions of the Hindú law to the contrary. *Sutaoo Kusbin* v. *Hurreeram Bin Ramchunder* 13th Feb. 1835. Bellasis, 1.—Anderson, Henderson, & Greenhill.

II. In the Supreme Courts.

3. In Sept. 1849 *A* agreed to sell to *B* a four-annas share, and also to assign his interest in two-annas other share of a certain indigo factory; "half the purchase-money to be paid at the time of execution of the conveyance, and the other half on the 1st March following." The same attorney was then employed by both vendor

and vendee, but the latter shortly afterwards appointed other attorneys to act on his part. Considerable delay intervened in consequence (among other causes) of the attorney for the vendor insisting on the execution of the conveyances prepared by himself, which the purchaser's attorneys declined to accept, and *vice versâ*. On the 3d October *A* gave notice that he had rescinded the contract. The following day *B*'s attorneys offered their deeds of conveyance for execution, and at the same time tendered half the purchase-money, which was refused. On the same day the defendant *C* purchased the interest contracted to be sold to *B*, and shortly afterwards sold the two-annas share to *D*. Held, 1stly, That time was not originally of the essence of the contract; 2dly, That it had not been subsequently made so by the acts of either party (*A* or *B*); 3dly, That (on the above grounds, and as *B* had not, under the circumstances, by reason of laches or otherwise, disentitled himself to relief) *A* had improperly attempted to rescind the contract; and a specific performance was decreed. *M'Arthur* v. *Kelsall and others*. 29th July 1850. 1 Taylor & Bell, 181.

III. In the Courts of the Honourable Company.

1. *Generally*.

4. Mutual liability in the body of a contract is not nullified by details of each contractor's liability indorsed on the deed. *Eshur Chunder Rae* v. *Mohun Doss and others*. 14th April 1846. S. D. A. Decis, Beng. 155.—Tucker.

5. The price of *Paddy*, contracted to be delivered at a certain season of the year, must be estimated at the market rates of the time agreed upon for delivery, if there be no stipulation to the contrary. *Gora Chund Mundul and others* v. *Lal Chaund Baboo*. 5th June 1847. S. D. A. Decis. Beng. 193.—Tucker, Barlow, & Hawkins.

6. *A* contracted to supply *B* with a certain quantity of saltpetre on a certain day, and in the event of *B* not taking it on that day, he was to pay interest on the price till he should receive it. It was not taken on the day fixed, and *A*, a day or two afterwards, sold it to a third party. This was held to be a breach of contract by *A*, and he was adjudged to pay damages. *Sheo Gholam Sahoo* v. *Mohummud Kazim Ali Khan*. 19th July 1847. S. D. A. Decis. Beng. 345.—Rattray, Dick, & Jackson.

7. In a claim founded on a contract for delivery of indigo, and which stipulated for the payment of three times the money advanced on failure in performing the conditions agreed upon, the defendants having delivered a part of the quantity promised, it was held not to be imperative on the Judge to decree the full penalty, but that, under the provisions of Reg. VI. of 1823, he was at liberty to exercise his discretion in awarding any sum on account of damages which, under the circumstances of the case, might seem equitable, provided that the amount did not exceed three times the sum advanced. *Tandy* v. *Bhowanee Singh and another*. 25th Aug. 1847. 2 Decis. N. W. P. 295. —Tayler, Begbie, & Lushington.

8. On non-fulfilment of engagements for the cultivation of indigo, the full amount of the penalty specified in such engagements is not recoverable. But under the provisions of Sec. 3. of Act X. of 1836, a planter was declared to be entitled to recover damages to the extent of the injury sustained by non-cultivation.[1] *Mackintosh* v. *Bechoo Ra-*

[1] The several provisions of the regulations, such as Cl. 3. of Sec. 5. of Reg. VI. of 1823, and Sec. 3. of Reg. V. of 1830, which authorised the Courts to award the full amount of penalty specified in agreement for the cultivation of indigo, have been repealed by Act XVI. of 1835, and Secs. 1. & 3. of Act X. of 1836.

wut and others. 5th Aug. 1848. 7 S. D. A. Rep. 527.—Tucker, Barlow, & Hawkins.

9. A party cannot avail himself of the conditions of a contract in his own favour so long as his own part of such contract remains unfulfilled. *Rajah Dummur Singh* v. *Ranee Susodun and another.* 15th July 1850. 5 Decis. N. W. P. 176.—Begbie, Deane, & Brown.

10. On a contract of lease of indigo land, with a condition that, after the lapse of two years, the lessor was, in the third year, to give to the lessee the option of taking as much of the land, with the *Kuntí* crop thereon, as he might please. Held, that the lessor, who, before the close of the second year, had rooted up the indigo crop, and cultivated the land on his own account for a new crop, was answerable to the lessee for any damage arising from his being excluded from exercising the stipulated option of selecting such land as he might wish, with the *Kuntí* crop on it, in the third year. *Solano* v. *Nuhmun Raee and others.* 21st Aug. 1850. S. D. A. Decis. Beng. 419. —Dick, Barlow, & Colvin.

2. *Construction of.*

11. A deed of sale of property for a *specified* consideration, although with the avowed object of enabling the seller to prosecute a claim at law, was held not to be invalid on the ground of Champerty, to constitute which the consideration must be indefinite, and the stipulation the transfer of a portion of the property sued for, on the transferee advancing money for the payment of costs. *Mt. Shurfun and another* v. *Sheikh Gholam Mohummud and others* 13th May 1848. 7 S. D. A. Rep. 495.—Tucker, Barlow, & Hawkins.

12. *A* enters into an agreement with *B* : *A* writes the document in the English language, of which *B* has only a slight knowledge, in terms vague and ambiguous. Semble, the Court will give *B* the advantage of the ambiguity, which he was unlikely, at the time the agreement was drawn up, to be able to correct. *Bondville* v. *Dias.* 29th June 1848. S. D. A. Decis. Beng. 606.—Jackson.

13. *A* entered into an agreement with *B*, by which *B* engaged to sell "all the timber I have to come down from the Toung Yeen forest, more or less 500 logs," at a certain price, viz. Rs. 13 per log: if the timber should arrive, and not be made over, a penalty of Rs. 30 a log to be forfeited. 547 logs were made over under this contract, at Rs. 13 each; but 300 more logs were brought down, and otherwise disposed of. On these *A* sued *B* for Rs. 9000, the penalty stipulated by the bond on the 300 logs disposed of by *B*. Held, that the expression "all the timber I have to come down" being indefinite, and the mention of 500 logs more or less being proof that the quantity expected was about so much, that the contract was good only for the quantity specified, or for some unimportant quantity more or less than that mentioned, and that in making over 547 logs *B* had fulfilled his contract, and was not liable to any penalty. *Ibid.*

3. *Illegal Contract.*

14. A contract to give up a portion of the property claimed to a person, on condition of his advancing the funds required for the costs of suit, is illegal, and a joint suit instituted for the recovery of the property by the parties to such contract was dismissed. *Lamb and others, Petitioners.* 25th April 1842. 1 S. D. A. Sum. Cases, Pt. ii. 29.—Reid.

15. One of two plaintiffs having engaged to defray the expenses of a suit in consideration of a share of the property in litigation sold by the other to him, the plaintiffs were nonsuited, and ordered to pay all costs. *Lootfonissa and others* v. *Meheronissa Khanum and another.* 28th

July 1846. S. D. A. Decis. Beng. 289.—Reid & Barlow.

16. The plaintiffs in a suit having sold a portion of the lands in dispute to raise funds for carrying on the suit, the transaction was held to come within the law of Champerty, and their suit was accordingly dismissed with costs.[1] *Syud Keramut Ali* v. *Sumbhoonath Mitr and others.* 11th Aug. 1847. S. D. A. Decis. Beng. 423.—Rattray, Barlow, & Jackson.

17. A plaintiff having been admitted as proprietor of a moiety of an estate sued for, for the avowed purpose of bringing and maintaining the action, the suit was dismissed. *Muha Rajah Muheshur Bukhsh Singh and others* v. *Government and others.* 8th July 1848. S. D. A. Decis. Beng. 659.—Rattray.

18. The Courts will not enforce *any stipulations* of an agreement between parties, if other reciprocal stipulations in it involve illegal conditions. *Omeis Chundur Pal Chowdhree* v. *Bajpaie Muharajah Damoodur Chundur Deb and others.* 7th Sept. 1850. S. D. A. Decis. Beng. 1850.—Barlow, Jackson, & Colvin.

19. The substitution *pendente lite* of a legal bond, for one rendered illegal by conditions of Champerty, and which had been cancelled, will render a suit admissible.[2] *Ali Awulfurah and others* v. *Kuneezuk Joynub Bibi.* 14th Sept. 1850. S. D. A. Decis. Beng. 483.—Colvin.

COSTS.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 6.
1. *Generally*, 6.
2. *Of Appeal to the Privy Council*, 30.
3. *Of unnecessary Parties*, 31.
4. *Of third Parties*, 40.
5. *Security for Costs*, 42.
6. *Taxation*, 46.
7. *Pleaders' Fees.*—*See* Pleader, 6 *et seq.*

I. In the Supreme Courts.

1. Where the application is to strike out more than one count, and is in part refused and in part complied with, each party pays his own costs. *Nubkissen Sing* v. *Bissonauth Dey Sickdar.* 16th Jan. 1846. Montriou, 7.

2. Where it appeared to be the established practice and usual course in the Supreme Court at Bombay not to allow costs to either side in cases where the puisne Judge differed in opinion from the Chief Justice, each party, under the circumstances, was ordered to pay his own costs. *Ramlall Thakoorseydass and others* v. *Soojamull Dhondmull.* 5th March 1847. Perry's Notes, Case 17.

3. A mortgagor (after mortgaging certain property a second time) became insolvent: an order was issued from the Insolvent Court, requiring the second mortgagee to come in and prove his claim. This he declined or neglected to do, but subsequently instituted a suit in the Supreme Court for the purpose of enforcing his mortgage. Held, that, under the circumstances, the second mortgagee was not entitled to his costs of suit out of the insolvent's estate. *Llewellyn* v. *O'Dowda.* 23d July 1847. Taylor, 169.

4. Upon demand and refusal to pay taxed costs, an order for payment will be granted, upon affidavit of the demand and refusal, and service of notice of motion. Upon service of that order, and further demand and refusal, an order for attachment will be granted, without notice, upon

[1] See the cases of *Ram Gholam Sing* v. *Keerut Sing and others.* 4 S. D. A. Rep. 121. *Baboo Brijnarain Singh* v. *Rajah Teknerain Singh.* 4 S. D. A. Rep. 121; and *Mt. Zuhooroonnissa Khanum* v. *Raseek Lal Mitter and others.* 6 S. D. A. Rep. 298.

[2] See the case of *Ram Gholam Sing* v. *Keerut Sing.* 4 S. D. A. Rep. 12.

production to the Registrar of an affidavit of service of the last-mentioned order, and of the further demand and refusal. *Mutty Loll Seal* v. *Bycauntnauth Mullick and others.* 15th Nov. 1847. Taylor, 188.

5. One *A*, believing his landlord's title to be defective, purchased the lands whereof he was tenant, before the expiration of his lease, from another party, in whom he alleged the real title to exist, taking the conveyance and bringing ejectment in the name of the lessor of the plaintiff. Judgment being signed by default, motion was made by the landlord, on petition, to enter into the common rule to defend his title to the premises in question as landlord. Held, under the circumstances, that (contrary to the ordinary rule) the judgment must be set aside *without costs*. *Doe dem. Bissonath Day* v. *Hilder.* 15th Nov. 1847. Taylor, 189.

II. In the Courts of the Honourable Company.

1. *Generally.*

6. Costs cannot be awarded to a *Mukhtár* under the Circular Order of the 28th June 1839. *Choonee Lal, Pauper* v. *Thompson.* 30th June 1846. S. D. A. Decis. Beng. 248.—Rattray, Tucker, & Barlow.

7. In calculating costs, the amount due for *Vakíl's* fees in the Lower Court should be taken at the single sum which would have been expended provided the same *Vakíl* had conducted the case from beginning to end; and where one *Vakíl* may be unable to conduct his case to a conclusion, and another takes his place, a full fee to each pleader is not required by law. *Tyub Begum and another* v. *Sahibeh Begum.* 26th May 1846. 1 Decis. N.W.P. 17. — Thompson, Cartwright, & Begbie.

8. In a suit by *Patnídárs* against the *Zamíndár* and the mortgagees of his *Zamíndárí*, which was decided in favour of the plaintiffs, the costs of the mortgagees were ordered to be paid by the *Zamíndár*. *Konwur Ram Chunder Bahadoor* v. *Monohora Dassee and others.* 16th July 1846. S. D. A. Decis. Beng. 284. —Tucker, Reid, & Barlow.

9. *A* instituted a suit *in formâ pauperis*, and deeds of compromise having been entered into, the defendants undertook to pay the costs of the suit upon *A's* entering up a *Rází námeh:* this *A* neglected to do, but the compromise was sustained; and it was decreed that *A* should pay, out of the consideration-money to be received by him under the deeds of compromise, the costs incurred subsequently to such deeds. *Munni Ram Awasty* v. *Sheo Churn Awasty and another.* 4th Dec. 1846. 4 Moore Ind. App. 114.

10. It is illegal to charge an appellant with the respondent's fees twice over, *i. e.* in the suit as originally tried, and also on its being remanded for trial *de novo.*[1] *Husseinee Begum and others* v. *Mt. Nubbee Buksh.* 3d May 1847. 2 Decis. N. W. P. 109.—Tayler.

11. It is competent to the Civil Courts to exercise a discretion in awarding costs of execution previous to the distribution of the assets. *Ram Loll, Petitioner.* 18th May 1847. 1 S. D. A. Sum. Cases, Pt. ii. 101. —Tucker and Hawkins.

12. Where costs have not been awarded in the decretal order, the Court below cannot order execution for costs without first correcting the decree on the application of the decree-holder. *Bibi Takee Sherab, Petitioner.* 5th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 107.— Hawkins.

12 *a*. But subsequently the said decree of the Lower Court, on a regular appeal, having been affirmed

[1] Construction No. 1105.

on trial, and an order passed by the full Court for payment of the costs of the Zillah and Sudder Courts; it was held, that the former miscellaneous order of the Sudder Dewanny Adawlut requiring an application to the Zillah Court for a review of its judgment in regard to the Zillah costs had been superseded accordingly. *Daud Mullic Fredoon Beglar, Petitioner.* 12th March 1850. 2 Sev. Cases, 515.—Colvin.

13. The decisions of the Lower Courts were annulled, as an award of costs was out of proportion to the sum decreed, and no reason given for such disproportion.—*Deyal Singh* v. *Buktawur Panday.* 13th July 1847. 7 S. D. A. Rep. 353.—Tucker. *Achumbit Lall Muhtah and others* v. *Kunhye Lall and others.* 30th March 1850. S. D. A. Decis. Beng. 84.—Colvin & Dunbar.

14. Where a respondent filed his answer to an appeal without waiting for service of notice; it was held, that the mere absence of that process did not render him liable to pay his own costs. *Munjee Juttee and others* v. *Makoond Lall and others.* 14th Feb. 1848. 3 Decis. N. W. P. 54.—Tayler, Thompson, & Cartwright.

15. Respondents unnecessarily filing separate replies to separate appeals must pay their own expenses in regard to them, though otherwise successful. *Collector of Dacca* v. *Lamb and others.* 9th March 1848. 7 S. D. A. Rep. 446.—Jackson, Hawkins, & Currie.

16. A summary appeal does not lie against the order of costs in a decree in a regular suit. *Bhurrut Chunder Mujoomdar and others, Petitioners.* 22d March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 136.—Hawkins.

17. Clause 3. of Sec. 26. of Reg. XXVII. of 1814 does not authorisé the Courts to impose, at their discretion, the costs of one defendant upon another defendant, the words "parties respectively" made use of in that Section applying respectively to the plaintiff and defendant, or the appellant and respondent. *Runmust Khan* v. *Hill.* 21st Feb. 1848. 3 Decis. N. W. P. 1848.—Tayler, Thompson, & Cartwright. *Jhajun* v. *Juggut Singh and others.* 8th Aug. 1848. 3 Decis. N. W. P. 280.—Tayler, Thompson, & Cartwright. *Mohumed Ali and others* v. *Shewa Singh.* 30th April 1849. 4 Decis. N. W. P. 98.—Thompson, Begbie, & Lushington. *Jowahir Singh* v. *Hurjus Rai.* 6th Aug. 1849. 4 Decis. N. W. P. 271.—Thompson, Begbie, & Lushington.

18. The plaintiff in a claim, declared to be exaggerated, having gained a portion of his suit, was held to be responsible for the costs only on the exaggerated portion that was not decreed to him. *Mohumed Oosman* v. *Prag Dyal and another.* 21st Nov. 1848. 3 Decis. N. W. P. 385.—Tayler, Thompson, & Cartwright.

19. A separate action cannot be brought for the recovery of costs awarded in a decree: if the decree cannot be executed the costs cannot be recovered. *Moortuza Khan and others* v. *Wazeer Ali and another.* 21st Nov. 1848. 3 Decis. N. W. P. 392.—Tayler, Thompson, & Cartwright.

20. Where a decree giving *Wásilát* directs an inquiry and adjustment of the amount to be made in course of execution of the decree, it should direct the costs to be given eventually only in proportion to the amount which may be found to be due after such adjustment. *Sheik Moula Buksh* v. *Ramkishun Misr.* 19th April 1849. S. D. A. Decis. Beng. 119.—Dick, Barlow, & Colvin.

21. An award of the entire costs against a party, when a moiety of the claim against such party was dismissed, was held to be irregular. *Mudun Mohun Manik and others* v. *Kotwal Nurhuree Manik.* 18th July 1849. S. D. A. Beng. 294.—Jackson.

22. An account of costs not prepared in conformity with the decree, should be rectified by a miscellaneous

application to the Court by which the decree was passed, and not in a regular appeal. *Heera Lall and others* v. *Bhola Pooree.* 1st Aug. 1849. 4 Decis. N. W. P. 261.—Lushington.

23. Appellants drawing petitions of appeal at an excess over the legal stamp, or appealing at a value in excess of the sum actually sought to be recovered by the appeal, cannot recover costs arising out of such excess stamp, or valuation. *Baboo Gunesh Dutt* v. *Rajah Ramnurain Singh.* 3d Jan. 1850. S. D. A. Decis. Beng. 1.—Barlow, Colvin, & Dunbar. *Sheebnath Ghose and others* v. *Degumbur Ghose and another.* 20th June 1850. S. D. A. Decis. Beng. 310.—Barlow, Jackson, & Colvin. *Garstin* v. *Lukhee Nurain Mundul.* 10th Dec. 1850. S. D. A. Decis. Beng. 564.—Dick, Barlow, & Colvin.

24. Costs are not to be charged against a defendant upon a mere conjecture that he may have been concerned in an injury done to the plaintiff. *Elias Marcus* v. *Fukhrooddeen Mohummud and others.* 26th March 1850. S. D. A. Decis. Beng. 70.—Barlow, Colvin, & Dunbar.

25. When a Lower Court dismisses a plaint, yet charges a defendant with his own costs, the grounds upon which a defendant is so charged should be clearly explained in the decision. *Mt. Mukbool Fatimah and others* v. *Oomutul Fatimah.* 30th March 1850. S. D. A. Decis. Beng. 82.—Colvin.

26. A party to whom possession of an estate had been given up by another, notwithstanding some previous disputes as to the execution of a compromise, sued for registration of his name as proprietor of the estate. The defence was, that the suit was unnecessary, as the plaintiff had only to apply to the Collector as the proper officer for making registration. The Lower Court decided in favour of the plaintiff, awarding to him at the same time all the costs of the action. Held, that the award of costs in such a suit was improper, as it was incumbent on the plaintiff to apply for registration in the first instance to the Collector; and a suit in Court would only have been necessary had the other party raised objections before the Collector. *Hunooman Pursaud* v. *Kalleepersaud.* 5th June 1850. S. D. A. Decis. Beng. 260.—Barlow & Colvin. (Jackson dissent.)

27. A tender to a Collector of a balance of rent due to a *Zamíndár* was held not to be sufficient to bar an award of costs against the under-tenant on a suit for the balance brought against him by the *Zamíndár,* because, even had there been proof of an express tender to the Collector of a deposit of the whole amount of balance, that officer was not an authority competent to receive such a deposit. *Neelkaunth Dass and another* v. *Kowar Ram Chundur.* 10th June 1850. S. D. A. Decis. Beng. 273.—Barlow, Jackson, & Colvin.

28. *A,* in execution of a decree against *B,* causes certain lands to be sold. It is proved in a suit that the property did not belong to *B. A,* having defended the suit on the ground that the property *did* belong to *B,* and having, from the first, done all in his power to dispute the claim of the rightful owner, is justly liable to a decree for costs and mesne profits in favour of that owner. It is not, under such circumstances, a valid plea on this point, that, in appeal, he admits the right of the owner, seeking to shelter himself from the decree for costs and mesne profits, on the ground that they should be exacted from the purchaser at the sale, he, *A,* having only sold the *right* and *interest* of *B,* at the risk of the purchasers. *Muharajah of Burdwan* v. *Huree Nurain Chowdhree and others.* 20th Aug. 1850. S. D. A. Decis. Beng. 414.—Dick, Barlow, & Dunbar.

29. On a reversal of an auction

sale of a *Patní*, the costs of the action, the *Zamíndár's* (defendant's) being excepted, were awarded against the purchaser at the illegal sale, as the litigation had been caused by his proceedings in endeavouring to maintain the sale, and as the Collector, by whom the sale was conducted, had left the country. *Kishen Mohun Burral* v. *Lukee Monee Dassee*. 7th Sept. 1850. S. D. A. Decis. Beng. 467.—Barlow, Jackson, & Colvin.

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2. *Of Appeal to the Privy Council.*

30. The Sudder Dewanny Adawlut cannot levy costs in an appeal to the Privy Council, where the decree of the Judicial Committee did not provide for such costs. *Rajah Motee Lal Oopadya* v. *Jugurnath Gurg*. 11th Sept. 1840. 1 S. D. A. Sum. Cases, Pt. i. 48.—Reid.

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3. *Of unnecessary Parties.*

31. Where plaintiffs in a suit for certain lands included a party in the suit as being in the nominal possession of an under tenure, and the suit was compromised under an award of arbitration by which such party was released from liability, he was held to be entitled to his expenses from the plaintiffs. *Beyrubchunder Singh* v. *Radha Gobind Mittre and others*. 22d April 1845. S. D. A. Decis. Beng. 122.—Gordon.

32. A defendant was held to be liable for the costs of his co-defendants, the circumstance of their having been parties to the suit being solely and entirely attributable to himself, and they having been released from all responsibility as regarded the claim of the plaintiff. *Laloo Sahoo* v. *Sub-deputy Opium Agent of Patna*. 13th May 1846. S. D. A. Decis. Beng. 182.—Rattray.

33. Costs were allowed to a party unnecessarily made a defendant in a case subsequently compromised between the plaintiff and the other defendants. *Radha Govind Mitter* v. *Bhyrub Chunder Singh*. 27th April 1847. 7 S. D. A. Rep. 289.—Gordon.

34. Costs in the Lower Courts were remitted to a defendant who had been charged with them there, although exonerated from the plaintiff's claim; but the costs of special appeal were charged against him, as, under the circumstances, he should have applied to the Lower Appellate Court for a review of judgment. *Rajah Radhakaunth Buhadoor* v. *Ram Dhun Haldar*. 12th Feb. 1848. 7 S. D. A. Rep. 441.—Tucker, Hawkins, & Currie.

35. Where Government was made a defendant in a case by supplementary plaint, but, on an explanatory answer being filed, the plaint was withdrawn, the plaintiff was held to be liable for the costs of Government, and for half the fees of the Government *Vakíl*, the remaining half being declared not to be claimable or due by either party. *Government* v. *Mt. Imambandee*. 8th May 1848. S. D. A. Decis. Beng. 422.—Rattray, Dick, & Jackson.

36. Costs of parties improperly made defendants, when they ought to have been made witnesses, must be borne by the plaintiff. *Dwarkanath Soor* v. *Goonomonee Dassee and another*. 10th Dec. 1849. S. D. A. Decis. Beng. 440.—Barlow, Colvin, & Dunbar.

37. Costs of parties improperly sued were saddled upon those who brought them into Court. *Wooma Moye Dibeea and others* v. *Bhyrub Chundur Mujmoodar and others*. 20th June 1849. S. D. A. Decis. Beng. 213.—Dick & Colvin.

38. Costs were charged to an appellant unnecessarily making his co-defendant a respondent. *Gunga Purshad* v. *Bhugwan Dutt and others*. 11th July 1849. S. D. A. Decis. Beng. 284. Dick, Barlow, & Colvin.

39. Costs incurred in suing a wrong party cannot subsequently be recovered from another, who may be declared liable in another suit for

what the first party was improperly sued. *Ram Gopal Mookerjee* v. *Ranee Tara Munee Dibbea and others.* 23d Oct. 1849. S. D. A. Decis. Beng. 398.—Dick.

4. *Of Third Parties.*

40. In the event of a party whose property may be at stake in an appeal, and who may not be named as a respondent by the appellant, appearing of his own accord, and being permitted on petitioning the Court to file his *Jawábi Mújibát*, the Court has full power to adjudge the costs incurred by him. *Munjee Juttee and others* v. *Makoond Lall and others.* 14th Feb. 1848. 3 Decis. N. W. P. 54.—Tayler, Thompson, & Cartwright.

41. An unsuccessful party in a suit ought not to be charged with costs of claimants or third parties with whom he had no concern, and who had come forward unnecessarily. *Madob Chundur Mujmoodar and others* v. *Tweedie.* 8th Aug. 1849. S. D. A. Decis. Beng. 334. —Dick, Barlow, and Dunbar.

5. *Security for Costs.*

42. Held, that it is not necessary in any Court of Appeal to take any security for costs, but it is in the discretion of every Court of Appeal to demand such security if it should think fit. *Gaurmohan Sha, Petitioner.* 17th Nov. 1845. 2 Sev. Cases, 289. 1 S. D. A. Sum. Cases, Pt. ii. 72.—Reid.

43. In a case where the Zillah Judge had removed the appeal of a petitioner from the file of pending cases, on his failing to furnish good and sufficient security for all eventual costs, the Sudder Dewanny Adawlut, on summary appeal, ordered the restoration of the appeal to its original number in the file of pending cases, as no special reason had been recorded by the Zillah Judge for his demand of security under the discretion vested in him by Act III. of 1845. *Ibid.*

44. To ascertain the sufficiency and validity of *Málzámini* security offered by an appellant to the Queen in Council against a decision of the Agra Sudder Court, and lying in a district within the jurisdiction of the Calcutta Sudder Dewanny Adawlut, the practice is, to forward the original security bond (through the Register), with a proceeding under the seal and signature of the Agra Sudder Court, to the Register of the Calcutta Sudder Court, to obtain an order of Court for the institution of the necessary inquiry through the Zillah Judge of the Bengal district, within whose jurisdiction the property lies. On completion of the inquiry, the proceedings held thereupon, together with the original security bond, by order of the Court, are to be returned through the same channel of communication. *Sayyad Abdullah* v. *Murad-oon-Nissa and others.* 12th Feb. 1847. 2 Sev. Cases, 359.—Tucker.

45. It is illegal for a Principal Sudder Ameen to demand security for costs in appeal from the decision of a Moonsiff. *Hurree Kishen Shome* v. *Suffer Bibi.* 5th Aug. 1848. S. D. A. Decis. Beng. 742. —Tucker, Barlow, and Hawkins.

45 *a.* Held, that Cl. 1. of Sec. 2. of Reg. XIV. of 1829, and Construction No. 1355, apply only to persons being inhabitants of a foreign territory instituting or defending suits in the local Courts. *Roe, Petitioner.* 14th March 1850. 2 Sev. Cases, 521.—Dunbar.

45 *b.* And in a case where the native Principal Sudder Ameen had dealt with the suit of an European plaintiff under the law of default, because he had furnished security for costs after the expiration of six weeks, the Sudder Dewanny Adawlut reversed the orders appealed against, and directed the restoration of the case to its original number on the file of cases in the Lower Court, as such security could not be required, under Reg. XIV. of 1829,

from the plaintiff, who, though an European, was yet an inhabitant of the district. *Ibid.*

45 *c.* A deposit in money or Government promissory notes at market valuation is required to be made in the treasury of the Court, as security for costs of appeal to the Privy Council, within three months, commencing from the day next after that of the rejection of the security bond on the score of its insufficiency or invalidity, and not from the date of the order of the Sudder Court confirming the report of the Zillah Judge in respect of its invalidity. *Bhairab Chandra Mujmoadar and others, Petitioners.* 6th July 1850. 2 Sev. Cases, 573. —Colvin.

6. *Taxation.*

46. Where the plaintiff has at first valued his suit at a certain sum, and afterwards by a *Tatammah Suwál* has reduced such valuation, the costs are to be taxed according to such reduced valuation, agreeably to which the suit was tried and determined. *Rumessur Singh* v. *Agund Rawut.* 23d Nov. 1848. 3 Decis. N. W. P. 395.—Cartwright.

COURT OF WARDS.

1. The respondent sued the adoptive mother of the appellant for Rs. 5000, the principal of a bond-debt incurred by her to pay several decrees against her deceased husband, and obtained an *ex parte* decree against the estate of the appellant, in the absence of the defendant, who, collusively as it was alleged, admitting the debt on the back of the notice served upon her to defend the suit acknowledged to confess judgment within twelve days. In the execution of this decree, the estate of the appellant, a minor under the Court of Wards, being ordered for sale, the Collector, under the directions of the Commissioner, interposed, and obtained a review, when the respondent was directed to conjoin the *Osí* in the action by a supplementary plaint. This being done, the respondent again obtained a decree against the estate of the minor, which, on appeal of the *Osí*, the Zillah Judge confirmed. Both these decisions were reversed on a special appeal by the Sudder Dewanny Adawlut (without entering into the fact of the loan conformably to decisions previously adjudged by the Court), on the ground that the adoptive mother had no authority to borrow or disburse any money on account of the minor, even if with the consent of the guardian, as the estate was under the Court of Wards, and not liable for the demand of the respondent. *Harkishwar Chaudhuri* v. *Ramdulal Lushkar.* 21st Aug. 1845. 2 Sev. Cases, 215.—Dick, Reid, & Barlow.

CREDITOR. — See Debtor and Creditor, *passim.*

CRIMINAL LAW.

I. Bengal Law, 1.
1. *Administering poisonous drugs*, 1.
2. *Affray*, 2.
3. *Appeals*, 5.
4. *Approver*, 9.
5. *Breaking Jail*, 10.
6. *Commitment*, 11.
7. *Confessions*, 13.
8. *Conspiracy*, 17.
9. *Culpable Homicide*, 18.
10. *Dacoity*, 24.
11. *Embezzlement*, 26.
12. *Evidence*, 29.
13. *Foreign territories, Offences committed in*, 35.
14. *Forgery*, 36.
15. *Fraud*, 37.
16. *Hazáríbágh*, 38.
17. *Illegal imprisonment*, 39.
18. *Indictment*, 40.
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I. Bengal Law.

1. *Admistering poisonous drugs.*

1. A prisoner convicted of administering poisonous and intoxicating drugs with intent to steal, and who admitted that he had for twenty years been making his livelihood by such practices, was sentenced to imprisonment for life with hard labour in transportation. *Government* v. *Luloo Koormee.* 7th Dec. 1849. 6 N. A. Rep. 201.—Dunbar.

2. *Affray.*

2. The prisoners were convicted of being concerned in an affray, attended with wounding, in resistance to a fraudulent distraint, and were sentenced, under all the circumstances, to six months' imprisonment, and a fine of fifteen rupees in lieu of labour.[1] *Government* v. *Mahomed Ameer and others.* 31st March 1845. 6 N. A. Rep. 49.—Dick.

3. In a case of affray, attended with homicide and wounding, a heavier measure of punishment was awarded to those belonging to the party whose oppressive conduct gave rise to the affray. *Government* v. *Hurdeb Ghose and others.* 29th Sept. 1849. 6 N. A. Rep. 179.—Dunbar.

4. On the trial of a number of *Ryots* for an affray, attended with homicide and wounding, with the

[1] This case has suggested the expediency of altering the law as ruled by Construction No. 348 of the 19th April 1822, which allows of no legal remedy to a party whose property is fraudulently distrained, except by a civil action for damages.

armed servants of the farmers, it appeared that the *Ryots* had been provoked, on the night previous to the affray, by serious violence and ill-treatment, on the part of some of the farmers' servants, accompanied by several police and revenue *Barkandázes*, and that, in the affray, four of the *Ryots* were killed, and four wounded by stabs or thrusts, whilst the wounds inflicted on the farmers' servants were comparatively inconsiderable, and the *Ryots* had not ill-treated four of those servants whom they seized and carried away from the scene of the affray. Under the peculiar circumstances of the case, it was thought sufficient to sentence the principal leader of the *Ryots* to imprisonment with irons for two years, with a fine of Rs.30, and the remainder of the party to imprisonment without irons for one year, with a fine, of Rs.15 each. *Government* v. *Sheik Oomur and others.* 22d Dec. 1849. 6 N. A. Rep. 220.—Colvin.

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3. *Appeals.*

5. During the absence of a Sessions Judge from his station the Nizamut Adawlut, on petition, directed the Magistrate to stay the execution of his award passed under Act IV. of 1840, until the return of the Sessions Judge, to enable the petitioner to prefer his appeal allowed by law. *Hills, Petitioner.* 9th Dec. 1844. 2 Sev. Cases, 153.—Tucker, Rattray, & Barlow.

6. Application for review of judgment in an appeal under Act IV. of 1840 was unamimously refused by three Judges of the Nizamut Adawlut after *Vakils* on both sides had been heard. *Hills and another* v. *Prankrishn Paul Chowdhooree and another.* 8th March 1845. 2 Sev. Cases, 155.—Tuckêr, Reid, & Barlow.

7. Agreeably to Sec. 8. of Act IV. of 1840, no appeal can lie to the Nizamut Adawlut from the orders of a Sessions Judge directing the execution of an award of arbitrators made under Sec. 9. of the said Act. *Isrinand Dath Jha, Petitioner.* 24th Aug. 1846. 2 Sev. Cases, 301. —Reid.

8. The Nizamut Adawlut cannot admit an appeal to the Queen in Council from a sentence passed by the Court. *Rughoobeer Singh* v. *Gopeenath Burrooah and others.* 30th Sept. 1848. 6 N. A. Rep. 94. —Tucker, Barlow, & Hawkins.

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4. *Approver.*

9. It does not invalidate the evidence of principal offenders, made approvers, that they have been admitted to be approvers contrary to the intentions of Reg. X. of 1824. *Nim Chand Mookerjea* v. *Moteeoolla Shaik Sirdar and others.* 13th April 1849. 6 N. A. Rep. 111.—Barlow.

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5. *Breaking Jail.*

10. The offence of escaping from jail, while under a sentence of imprisonment, if committed without violence, is one of which, even although it may have been *several times previously* committed by the same prisoner, it is not proper that a commitment should be made to the Sessions Court. It is for the Magistrate to pass sentence in such a case within the limit of his powers, with reference to Construction No. 501, and Sec. 5. of Reg. XII. of 1818. *Government* v. *Sheikh Shikdar.* 11th Oct. 1849. 6 N. A. Rep. 187. —Colvin.

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6. *Commitment.*

11. A prisoner under commitment on a charge of wilful murder effected his escape. His commitment on re-apprehension, on an additional charge of escaping from jail whilst awaiting his trial at the Sessions, which was an act not arising out of the same circumstances as the original count, and one in which commitment was not necessary, was annulled. *Government* v. *Sheebnath Pundit.* 3d

April 1846. 6 N. A. Rep. 75.—Reid.

12. A commitment cannot be made on a charge of being a bad character. *Oodoychund Burno* v. *Minah Paramanik and others.* 26th June 1846. 6 N. A. Rep. 76.—Jackson.

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7. *Confessions.*

13. The prisoners confessed in the Mofussil to having committed the crime of murder and aiding and abetting murder, but pleaded not guilty on their trial. There was no direct evidence against them except their own confessions. The circumstantial evidence, however, was very strong, and they were convicted of being accomplices and aiding and abetting in the murder, and were condemned to imprisonment for life with hard labour in irons in transportation beyond seas, notwithstanding the verdict of the jury of the Sessions Court being "not guilty." *Government* v. *Sheikh Bengah and another.* 10th Feb. 1843. 6 N. A. Rep. 14.—Tucker.

14. The *Dároghah, Muharrir,* and *Barkandázes* of a *Thannah* were convicted of torturing the prosecutor to extort from him a confession on a false charge of *Dacoity,* and were sentenced to various periods of imprisonment with or without labour in irons. *Ramdoollub Roy* v. *Bholanath Gungoolee and others.* 24th Feb. 1843. 6 N. A. Rep. 18.—Reid & Lee Warner.

15. Confessions taken before a Magistrate, who did not give his undivided attention to them when recorded, cannot be received as legal evidence. *Hurrischunder Bose* v. *Rakumdee Sheikh and others.* 29th Sept. 1849. 6 N. A. Rep. 174.—Colvin.

16. A *Foujdárí* confession cannot be received in evidence when made only before the Assistant to the Magistrate, the Circular Order No. 54. of July 16, 1830, paragraph 20, expressly requiring it to be taken "on a personal examination" by the Magistrate himself. *Government* v. *Ramsoonder Gope.* 11th Oct. 1849. 6 N. A. Rep. 185.—Colvin.

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8. *Conspiracy.*

17. The mere reading over, or causing to be read over, to witnesses in attendance for examination in a Magistrate's Court, notes of the depositions of a witness who has been under examination, is not, in itself, a criminal offence or conspiracy to defeat the ends of justice.[1] *Government* v. *Nubkanth Purikhya and another.* 8th Dec. 1849. 6 N. A. Rep. 210.—Colvin.

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9. *Culpable Homicide.*

18. A prisoner was convicted of culpable homicide, and sentenced to seven years' imprisonment with irons and labour in the Zillah Jail, for having cut off with a sword the arm of another man, who died of the hæmorrhage. *Khodabuxsh Lushkur* v. *Seebnath Tewarree.* 25th Feb. 1843. 6 N. A. Rep. 23.—Barlow.

18*a*. The prisoner, who killed his wife in the attempt to consummate marriage, was sentenced to fourteen years' imprisonment with hard labour; the offence being punishable by *Tazír,* under the Muhammadan law, if death be the result of the first attempt at connection.[2] *Government* v. *Bawool Saha.* 4th Oct. 1843. 6 N. A. Rep. 29.—Tucker.

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[1] In this case the Court observed—"But besides this, there was here no ground for a commitment at all. It was the duty of the joint Magistrate to have kept witnesses, who were in attendance before his Court, so under watch as that no communication could be held with them."

[2] In this case the deceased had not arrived at puberty: the medical evidence also went to shew that it was highly improbable that the injuries she had received could have resulted from sexual intercourse, and that it was to be inferred that the prisoner had resorted to violence, and made use of some instrument to dilate the parts in order to effect his object.

19. The deceased met his death in a quarrel, at the hands of the prisoner, the discharged manager of an indigo factory belonging to a relative of the deceased. Held, under the peculiar circumstances of the case, that though the prisoner was previously prepared with arms to resist the deceased, the offence did not amount to more than culpable homicide, and the prisoner was sentenced to imprisonment for seven years. *Government* v. *Delpeirou.* 26th Oct. 1846. 6 N. A. Rep. 81.—Rattray.

20. A prisoner convicted of culpable homicide by beating a girl heavily with shoes for the expulsion of a supposed evil spirit, from the effect of which beating the girl died, was sentenced, there having been clearly no malicious intent, to imprisonment for one year without labour. *Kasseenath Mundul Napit* v. *Takoordas Porah and another.* 21st April 1849. 6 N. A. Rep. 137.—Colvin.

21. A prisoner was convicted of aggravated culpable homicide, instead of murder as recommended by the Sessions Judge, the act appearing to have been one of sudden heat and passion, after what might have been the most serious provocation. Sentence, imprisonment in banishment for fourteen years with hard labour and irons. *Mt. Sooruth* v. *Nujeeb Sheikh.* 22d Nov. 1849. 6 N. A. Rep. 196.—Colvin.

22. A prisoner was sentenced to two years' imprisonment, and to pay a fine of Rs. 20 in lieu of labour, for having permitted a person, for whose arrest he held an Order of the Civil Court, to be illtreated and beaten by the decree-holder and others to such an extent that he died in consequence immediately afterwards. *Mt. Jyemunnee* v. *Sumbhoo Singh.* 6 N. A. Rep. 192. 22d Nov. 1849.—Dunbar.

23. A prisoner, charged with culpable homicide, was acquitted, on the ground that the mere circumstance of his being present when the beating which caused the death of the deceased was inflicted, was not sufficient evidence of criminal privity to the fact, of which the *Fatwa* of the law-officer found him guilty. *Government* v. *Jugbundhoo Swaie and another.* 29th Dec. 1849. 6 N. A. Rep. 228.—Dunbar.

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10. *Dacoity.*

24. On the trial of a prisoner charged with assembling and going forth for the purpose of committing *Dacoity*, the *Fatwa* of a law-officer, or, in lieu of it, the verdict of a jury or assessors, cannot be dispensed with. *Government* v. *Sungram Mundle and others.* 4th July 1845. 6 N. A. Rep. 52.—Reid. (Dick dissent.)

25. Some of the principals were made approvers in a case of *Dacoity* attended with murder. *Nim Chand Mookerjea* v. *Moteeoolla Shaik Sirdar.* 13th April 1849. 6 N. A. Rep. 111.—Barlow.

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11. *Embezzlement.*

26. A prisoner, who was *Podar* of the Bancoorah collectorate, made away with a certain sum of money received by the Collector for the purpose of being, and directed by him to be, held in deposit. The money did not appear as an item in the memorandum of cash balance, &c., on a change of Collectors, and the prisoner was held guilty of embezzlement of public money, and sentenced to imprisonment for one year without labour or irons. *Government* v. *Rammohun Podar.* 13th June 1842. 6 N. A. Rep. 10.—Shaw.

27. A *Sarbaráhkár* under Reg. V. of 1812 can be prosecuted on the part of Government for the embezzlement of rents collected. The provisions of Reg. II. of 1813 are not, however, applicable. *Government* v. *Ram Raja Bose.* 5th Oct. 1844.

6 N. A. Rep. 42. Barlow, Rattray, Reid, & Dick.

28. A treasurer and acting treasurer of the Lohurduggar division of the Agency were convicted of criminal breach of trust in being accessary to the misappropriation of the public funds by the principal European officer of the district, and a writer in the English branch of the office was convicted of privity to such criminal breach of trust. Under the peculiar circumstances of the case, the two first-named prisoners were sentenced to imprisonment for one year, and the last prisoner to imprisonment for six months. *Government* v. *Goorbuksh Ram and others.* 31st Aug. 1849. 6 N. A. Rep. 156. —Colvin.

12. *Evidence.*

29. It was held that the recital, in the *Rúbakárí* of commitment, of a prisoner having made oath, is not sufficient evidence of the fact. *Government* v. *Byjnath Singh.* 28th Feb. 1821. 2 N. A. Rep. 64.—Leycester.

30. Held, that the recorded evidence of witnesses in a civil suit is not sufficient proof, in a criminal trial, as to the real value of the prisoner's property. *Ibid.*

31. The evidence of the witnesses for the defence must be heard, however worthless their testimony. *Government* v. *Kookroo Manjee and others.* 1st Dec. 1842. 6 N. A. Rep. 12.—Lee Warner.

32. In a trial for murder, the consequence of illicit intercourse between the deceased and the prisoner's wife, the evidence of the latter was taken by the Sessions Judge. It seemed that sufficient evidence to convict existed without the testimony of the wife; and the Nizamut Adawlut held, that it was wrong, under those circumstances, to take her evidence. *Mt. Soobuddra* v. *Godye Mullungy.* 3d July 1843. 6 N. A. Rep. 27.—Gordon.

33. A complainant, under Sec. 4. of Act IV. of 1840, cannot be sworn. *Government* v. *Busraj Singh and another.* 22d Dec. 1848. 6 N.A. Rep. 93.—Hawkins.

34. It is highly irregular and objectionable for a Judge to allude to a paper, termed a dying declaration of a deceased, as evidence, when the authenticity of that declaration has not been proved by witnesses in a trial, and when the declaration was not one made *in articulo mortis*, but, on the contrary, nearly a month before the date of the death of the deceased, at a time when his wounds were not considered of a dangerous character. *Government* v. *Faiz Ali Hujjam.* 4th June 1849. 6 N. A. Rep. 150.—Colvin.

13. *Foreign territories, Offences committed in.*

35. The rule that the proceedings on a trial for an offence committed in a foreign territory must be quashed, unless the permission of Government to bring the accused to trial has been obtained,[1] is applicable to the extra-regulation provinces. *Meeboo* v. *Ngangelah and another.* 8th July 1846. 6 N. A. Rep. 79.—Reid & Barlow.

14. *Forgery.*

36. Prisoners, charged with forgery in attempting to give effect to forged documents, were acquitted, on the ground that the evidence did not shew either that the documents really had been fraudulently altered, or that the prisoners were aware that the alterations had been made with a fraudulent intent. *Government* v. *Purmeshur Dutt and others.* 15th Dec. 1849. 6 N. A. Rep. 215.—Dunbar.

15. *Fraud.*

37. The defendant granted a lease

[1] Reg. V. 1809. Reg. VIII. 1813. Reg. I. 1822. Reg. VIII. 1829.

of lands. Shortly after, he executed a fictitious lease to himself in the name of another person, with a view to oust the first lessee. Held, that this was a fraud punishable by the Criminal Courts. *Government* v. *Maha Rajah Rehmut Allee Khan.* 27th Feb. 1841. 6 N.A. Rep. 2.—Rattray, Tucker, & Reid.

16. *Hazáríbágh.*

38. There is a discretion in the Nizamut Adawlut, under the terms and spirit of Sec. 6. of Reg. XII. of 1833, to determine whether, in the territory under the Chota Nagpore Agency, an act is punishable as an offence without reference to the provisions of the Muhummadan or any other positive law. *Government* v. *Goorbuksh Ram and others.* 31st July 1849.—Colvin.

17. *Illegal Imprisonment.*

39. Parties ought not to be placed in confinement in order to bring the facts of a case to light. *Ramdoollub Roy* v. *Bholanath Gungoolee and others.* 24th Feb. 1843. 6 N. A. Rep. 18.—Reid & Lee Warner.

18. *Indictment.*

40. A husband and wife should not be indicted jointly as receivers of stolen property found in their house, unless it be in evidence that the wife acted independently, and not under the influence of her husband.[1] *Shewa Sing* v. *Mt. Nujeebun and others.* 23d Aug. 1847. 6 N. A. Rep. 92.—Tucker.

41. Where other crimes, as homicide or wounding, are committed in direct connection with, and in furtherance of, a riot and assault, the charge should invariably be of riot and assault, attended with such other crimes, and not of participation in those other crimes only. And six prisoners were acquitted, as they were charged with homicide and wounding only, and they could not satisfactorily be identified as having been concerned in those crimes, though there was proof of their having participated in the riotous and unlawful assemblage and attack, in pursuance of which the homicide and wounding occurred. *Rambhoun Misser* v. *Autma Misser and others.* 5th May 1849. 6 N. A. Rep. 138.—Colvin.

42. A charge of "concealing the circumstances of a murder" is improper. According to the tenor of the Circular Order No. 8, dated June 7th, 1847, the charge should be framed distinctly, of accessaryship after the fact or privity. *Nyan Khan* v. *Allif Kareegur and others.* 11th May 1849. 6 N. A. Rep. 141.—Colvin.

19. *Insanity.*

43. The permission of Government should be obtained for the removal to the insane hospital of a prisoner who has become insane whilst under sentence. *Case of Aluckchunder Chatoorjee and another.* 1st Aug. 1846. 6 N. A. Rep. 80.

44. The Court of Nizamut Adawlut, upon the report of a Sessions Judge, cancelled the sentence passed upon a prisoner, whose insanity at the time of committing the offence of which he was convicted was established subsequently to his conviction. *Ibid.*

45. There having been indications of insanity in the past conduct of a prisoner charged with murder, he was convicted of the murder, but sentenced to imprisonment for life with labour and irons in the Zillah jail. *Bundhoo Dhangur* v. *Fagoo.* 12th Feb. 1849. 6 N. A. Rep. 107.

[1] See the case of *Government* v. *Perkash.* 1 N. A. Rep. 353.

—Dick & Colvin. (Jackson dissent.)[1]

46. A Sessions Judge, giving to a prisoner, charged with murder, the benefit of doubts as to his state of mind at the time when he committed the crime, proposed that he should be acquitted, but detained for life in the district jail, as it would be unsafe for a person of his character to go at large. The Nizamut Adawlut convicted the prisoner of murder, as the evidence did not establish that he was at the time "unconscious and incapable of knowing that he was doing an act forbidden by the law," upon which finding alone, upon a plea of insanity, a sentence of acquittal can be passed under Sec. 1. of Act. IV. of 1849, and sentenced him to imprisonment for life in the district jail with light labour and fetters, according to the discretion of the medical officer of the jail. *Government* v. *Kellye Sing.* 18th May 1849. 6 N. A. Rep. 144.—Colvin.

47. Where a prisoner had murdered his wife, a young girl not arrived at puberty, from some unascertained motive, he was sentenced to death, an inquiry which had been made by order of the Court shewing that there was no doubt as to the perfect sanity of the prisoner. *Mt. Sookree* v. *Boodhun Bhooya.* 21st Sept. 1849. 6 N. A. Rep. 163.—Colvin & Dunbar.

20. *Jury.*

48. Under the rules in force for the administration of criminal justice in Assam, a prisoner does not possess the right of peremptorily challenging the jury empannelled to try him. *Rughoobeer Singh* v. *Gopeenath Burrooah and others.* 30th Sept. 1848. 6 N. A. Rep. 94.—Tucker, Barlow, & Hawkins.

21. *Murder.*

49. One of the prisoners, who was stated to be a professed *Lateeal*, having killed the deceased, the Sessions Judge recommended that he should be imprisoned in transportation for life, instead of being sentenced capitally, on account of the absence of previous ill-will against the deceased. Held, that the fact of no previous enmity existing was an aggravation of his offence, and he was accordingly ordered for execution. The remaining prisoners convicted of aiding and abetting in the murder were, with the exception of one sentenced to transportation for life, sentenced to various periods of imprisonment with labour. *Mohun Chung* v. *Ameen Sirdar and others.* 24th July 1845. 6 N. A. Rep. 53.—Reid & Barlow.

50. The prisoner was convicted of murdering his mistress in sudden passion, on her refusing him access to her. Sentence, transportation for life. *Sonaram Mundul* v. *Panch Cowree.* 15th Dec. 1845. 6 N. A. Rep. 56. —Jackson.

51. The prisoner was convicted of the deliberate murder of his wife; and as there was no question of his sanity, and nothing in his favour but his assertion as the motive for his crime, in his own confession, that he killed her because she had administered some medicine to him which caused a noise in his stomach when empty, he was sentenced to capital punishment. *Mt. Audoree* v. *Hullodhur Syce.* 30th March 1849. 6 N. A. Rep. 110.—Jackson & Colvin. (Dick dissent.)[2]

[1] Mr. Jackson sentenced the prisoner to death. It is to be observed that, in addition to the facts of the case, which argued insanity on the part of the prisoner, the prosecutor, in his first deposition at the *Thanna, of himself said that the prisoner had formerly been mad.* And see the case of *Government* v. *Bhuwun Singh.* 1 N. A. Rep. 359.

[2] Mr. Dick observed that it was manifest, from the tenor of the prisoner's confession, that he acted under delusion; and, considering this a valid plea for investigation, he would have sentenced him to imprisonment for life with labour in the district jail.

52. In the absence of proof of legal justification of the murder of a wife by her husband, such as would have been afforded had there been evidence to the fact of the husband having detected his wife in the act of adultery; it was held, that the Court could not pass a less sentence than one of imprisonment in transportation for life with hard labour and irons. There being, however, strong presumption that the deceased was seized either in the act of adultery, or at least when found secreted with her paramour, it was not thought fit to pass a capital sentence either on the husband, or on his nephew, who aided him in the murder. *Government* v. *Banoo Ghurramee and another*. 13th Oct. 1849. 6 N. A. Rep. 189. —Colvin.

53. The principal in the murder of two girls, one of sixteen and the other of seven years of age, was sentenced capitally, and two principals in the second degree sentenced to imprisonment in transportation for life, it being probable, from the evidence, that violence had been attempted, if not completed, on the person of the elder girl. *Neal Sing* v. *Meting and others*. 8th Dec. 1849. 6 N. A. Rep. 212. —Barlow & Colvin.

22. *Perjury.*

54 It was held, that perjury is not extenuated by the circumstance of its being employed to serve parties, yet not at the expense of individuals. *Government* v. *Kookroo Manjee and others*. 1st Dec. 1842. 6 N. A. Rep. 12.—Lee Warner & Reid.

55. A prisoner, a *Chókidár*, was punished for perjury, for having made contradictory statements on oath before a Magistrate, under the Circular Order of the Nizamut Adawlut of the 18th June 1841, which must be considered as the construction of the law of perjury. *Government* v. *Huttee Jana Chowkeedar*. 20th Dec. 1844. 6 N. A. Rep. 47.—Gordon & Dick.

56. A prisoner was committed for trial because of his stating on solemn affirmation before the Principal Sudder Ameen that his name was *A*, under which he had attested a deed of gift in favour of the defendant in a suit before the Court, and again, when afterwards examined, that his name was *B*, and that he had so deposed on the previous date at the instigation of the said defendant. Held, that when the Principal Sudder Ameen received intimation that the prisoner had given evidence under a false name in the first instance, he should have taken his defence on that point, and then have proceeded to take evidence to the fact of the prisoner's perjury; instead of following which obvious course, the Principal Sudder Ameen first swears the prisoner, and examines him on oath as to a confession of his former perjury, and he is then committed for having given false and contradictory statements: The prisoner was acquitted. *Government* v. *Sheebdyal Dhanook*. 25th June 1847. 6 N. A. Rep. 91.—Hawkins.

23. *Powers of Sessions Judges.*

57. A magistrate having committed prisoners on a charge of highway robbery with wounding, the Sessions Judge, who conceived that a higher crime, viz. attempt to murder, was involved, returned the proceedings for the charge to be amended. This he did after the commencement of the trial. Finding the prisoners guilty, and seeing no extenuating circumstances, he proposed the highest punishment short of death, viz. imprisonment with labour and irons in transportation for life. The Court deemed the Sessions Judge's proceedings irregular, as the charge, "attempt to murder," was brought forward after the prisoners had given their answer in his Court to the charge on which they were first committed; consequently, as only the lesser charge could be

sustained, the punishment awarded was fourteen years' imprisonment with labour and irons. *Kartik Dey* v. *Gopal Das Tantee and another*. 4th Feb. 1842. 6 N. A. Rep. 7.—Barlow.

58. Held, that a Sessions Judge had exceeded his powers under Act XXXI. of 1841, in ordering a person to be apprehended on a charge of instigating torture inflicted by the *Dárógkah* and inferior officers of a *Thannah* on parties accused of *Dacoity* on such person's premises. *Ramdoollub Roy* v. *Bholanath Gungoolee and others*. 24th Feb. 1843. 6 N. A. Rep. 18.—Reid & Lee Warner.

24. *Privity to Murder.*

59. On a charge of "concealing the circumstances of a murder by sinking the body of the deceased into the river," the Sessions Judge, holding the charge proved against two of the prisoners, sentenced them to six months' imprisonment, and a fine of Rs. 50 in lieu of labour. Regarding this as a sentence on a conviction as for privity only, which might have been understood by the Sessions Judge to be the meaning of the vague terms of the charge, the Nizamut Adawlut did not interfere, but pointed out that such a sentence, even on a conviction of mere privity to murder, was unduly light.[1] *Nyan Khan* v. *Allif Kareegur and others*. 11th May 1849. 6 N. A. Rep. 141.—Colvin.

25. *Privity to Theft.*

60. A Sessions Judge having proposed to convict and sentence a prisoner of privity to theft, on the ground only of an agreement which he had given to the prosecutor, and which the prosecutor had accepted from him, promising the restoration of the stolen property in four months; it was held (there being no proof that any part of the stolen property had been in the possession of the prisoner, though part of it had been traced to the possession of his son), that such a privity, with assent of the prosecutor, was not a ground for a penal conviction. *Madhoo Sahoo* v. *Bhaig Sahoo and another*. 14th April 1849. 6 N. A. Rep. 135.—Colvin.

26. *Rebellion.*

61. In a trial for rebellion in the Tenasserim provinces, in which one life was lost, the Court, at the recommendation of the Commissioner, who, although he had recorded a sentence of death against him, proposed a mitigation of the punishment, sentenced the ringleader to imprisonment for life in the local jail, as a better warning to others than imprisonment with transportation beyond seas; and the remaining prisoners to various periods of imprisonment with labour and irons, according to their several degrees of guilt. *Government* v. *Nga Pan and others*. 19th July 1844. 6 N. A. Rep. 36.—Reid.

27. *Receipt of Stolen Goods.*

62. A conviction of receipt of stolen property can only be sustained when there is proof of the personal possession of such property by a prisoner, as by having the property in his own hands or under his personal charge, or within his house, with his consent, and with a knowledge on his part of its having been obtained by theft or robbery. When proof of personal possession in some of these modes is wanting, there may be ground for a conviction of being accessary after the fact in a theft or robbery, but not for that of the receipt or possession of the plundered property. *Government* v. *Goluk Dey Kait and others*. 26th May 1849. 6 N. A. Rep. 147.—Colvin.

[1] See the case of *Government* v. *Ruggoo Junna*. 4 N. A. Rep. 54.

63. The possession of articles of property known to have been obtained by theft or robbery, is distinguished from the *knowing receipt* of stolen property, by the Circular Order No. 215 of the 25th Jan. 1819, and is not, therefore, within the exceptions of Cl. 1. of Sec. 2. of Reg. II. of 1834. *Joora Ghazee* v. *Muneeroddeen and others.* 29th Sept. 1849. 6 N. A. Rep. 175.—Colvin.

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28. *Conditional Release.*

64. In a trial for murder, upon suspicion of which three persons had been apprehended, two were conditionally released, and one committed by the Principal Sudder Ameen exercising full magisterial powers. Held, that such release was perfectly justifiable, as the parties could be put on their trial at any future period, should further evidence render such a measure expedient; whereas, had they been committed on the evidence recorded, and acquitted, they could not in such case be tried a second time.[1] *Seebun Pandee* v. *Achumbit Singh.* 31st Oct. 1844. 6 N. A. Rep. 43.—Tucker & Reid.

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29. *Security for good Conduct.*

65. When a Sessions Judge may think it proper to act upon the authority vested in him by Cl. 2. of Sec. 2. of Reg. VIII. of 1818, as regards the demand of security from prisoners, who may appear, from the record of a trial before him, to be of notoriously bad or dangerous character, he ought to give to the prisoners the opportunity of summoning all witnesses whom they may desire to have heard on the subject of their character and livelihood, and ought not to pass orders till after full consideration of the statements of such witnesses. It is also not enough to record that there is sufficient evidence of bad character on the proceeding; but the particular statements or parts of the evidence from which this conclusion is drawn ought to be distinctly referred to in the order of the Sessions Judge. *Hurchunder Roy* v. *Shumsher Shaikh and others.* 3d Aug. 1849. 6 N. A. Rep. 154.—Colvin.

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30. *Selling Girls.*

66. In a case of conviction of attempting to sell girls for purposes of prostitution, the prisoners were held liable to discretionary punishment under the *Fatwa* of the law-officers, and sentenced to imprisonment for five years. *Government* v. *Mt. Golab Peshagur and others.* 8th May 1841. 6 N. A. Rep. 4.—D. C. Smyth & Reid.

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31. *Sentence.*

67. Additional imprisonment, in lieu of corporal punishment, cannot be awarded on conviction of offences not punishable with such punishment before the passing of Reg. II. of 1834. *Government* v. *Goolzar Sing.* 21st Jan. 1841. 6 N. A. Rep. 1.—Court at large.

68. A review of sentence cannot be admitted without fresh evidence in mitigation of the offence of the prisoners. *Government* v. *Kookroo Manjee and others.* 1st Dec. 1842. 6 N. A. Rep. 12.—Lee Warner & Reid.

69. Where the Sessions Judge found a prisoner guilty of murder, but recommended that she should be imprisoned for life in the Zillah jail, the Nizamut Adawlut sentenced her to suffer death. *Kobeer Faqeer* v.

[1] The evidence in this case, against the two prisoners conditionally released, was too contradictory and improbable to justify the Principal Sudder Ameen in committing them for trial. It was held, in a former case, where the evidence was merely defective, that a conditional sentence of acquittal, rendering the prisoner liable to another trial in the event of further evidence being procurable, could not be passed. *Ramjee Doss* v. *Ramchunder Potedar.* 25th July 1836. 5 N. A. Rep. 25.—Court at large.

Mt. Doorguttee. 2d June 1843. 6 N. A. Rep. 25.—Tucker & Reid.

70. The prisoners were convicts. The Magistrate having punished them, for breach of jail discipline, previous to their commitment for trial; it was held, that any further punishment would be cumulative, and therefore illegal. *Government* v. *Bisseshur and others.* 23d Dec. 1845. 6 N. A. Rep. 58.—Barlow.

71. A Magistrate sentencing parties to imprisonment for twelve months in default of security, without providing for their case being submitted to the Sessions Judge for their detention beyond one year; it is not competent to the Sessions Judge to enhance the original sentence, on the subsequent proposition of the Magistrate.[1] *Government* v. *Khansaman Mal and others.* 30th April 1846. 6 N. A. Rep. 76.—Barlow.

72. A Judge should record most distinctly his reasons for recommending a mitigated sentence. *Ram Nund* v. *Mt. Paattoh.* 7th Dec. 1849. 6 N. A. Rep. 202.—Barlow & Colvin.

73. The prisoners were acquitted on the ground of marked discrepancies between the first statement of the prosecutrix at the *Thanna,* and her subsequent depositions, and of improper delays in the record of confessions before the police. *Mt. Kudum* v. *Mugun and others.* 22d Dec. 1849. 6 N. A. Rep. 226.—Colvin.

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32. *Killing Thieves.*

75. A *Chôkidár,* convicted of culpable homicide by having used unnecessary violence in apprehending a thief, who died in consequence, was sentenced to be imprisoned for one year, and to pay a fine of Rs. 10 in lieu of labour. *Government* v. *Kishto Chowkeedar.* 18th Sept. 1849. 6 N. A. Rep. 160.—Dunbar.

[1] See Reg. VIII. 1818. Circular Order No. 9, 25th Sept. 1828, & No. 26, 15th May 1829.

33. *Trial.*

76. A trial having been postponed by the Sessions Judge from the 23d of August to the 7th of October, he was informed by the Court that the cause of the postponement should have been entered on the proceedings. *Ramdoollub Roy* v. *Bholanath Gungoolee and others.* 24th Feb. 1843. 6 N. A. Rep. 18.—Reid & Lee Warner.

77. The depositions of the civil surgeon in a trial for murder by the Sessions Judge not being on the record, the Nizamut Adawlut directed the return of the proceedings. *Kobeer Faqeer* v. *Mt. Doorguttee.* 2d June 1843. 6 N. A. Rep. 25.—Tucker & Reid.

78. The trial of a female prisoner having been held in the jail on account of her approaching confinement, the proceedings were quashed by the Nizamut Adawlut, and the Sessions Judge was directed to try her *de novo* in the established Court so soon as she should be sufficiently recovered. *Kummul Khoteil* v. *Mt. Soondooree Barroonee.* 24th Nov. 1843. 6 N. A. Rep. 33.—Reid & Barlow.

79. The proceedings in a trial were declared to be void *ab initio,* in consequence of the investigations by the police having been conducted in contravention of Cl. 2. of Sec. 2. of Reg. II. of 1832. *Muthoor Ucharge* v. *Moocheeram Sanee and others.* 16th Dec. 1843. 6 N. A. Rep. 35.—Rattray, Tucker, & Reid.

80. A Sessions Judge, concurring with assessors in a verdict of justifiable homicide, referred the trial to the Nizamut Adawlut, because the prisoner had concealed the body of the deceased. Held, that this, besides that it had formed no portion of the charge, was an insufficient ground of reference. *Dyanut Biswas* v. *Ameer Paramanick.* 4th July 1846. 6 N. A. Rep. 78—Jackson.

81. The postponement of a trial after its commencement by one

Judge, in order only that some remaining evidence may be taken before another Judge, by whom the trial will be completed, and sentence passed, or the trial reported to the Nizamut Adawlut, is strictly legal, according to the terms and intent of Sec. 49. of Reg. IX. of 1793. The Circular Order No. 3 of the 2d April 1812 is therefore of full force under Sec. 3. of Reg. X. of 1796, which declares the Nizamut Adawlut to be "empowered to prescribe the forms and conduct to be observed by the Courts of Circuit in all cases provided for by the Regulations agreeably to their construction thereof."[1] *Juggessur Attah* v. *Peetum Singh and others.* 21st Sept. 1849. 6 N. A. Rep. 165.—Dick & Colvin.

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34. *Wounding.*

82. On a conviction of wounding, but without proof of deliberate intention to commit murder, so as to bring this crime within the penalties of Reg. XII. of 1829, sentence was passed of imprisonment for seven years with labour in irons, the wounding having been attended with aggravating circumstances. *Chinibas Pal* v. *Tarachurn Chuttar.* 13th Oct. 1849. 6. N. A. Rep. 188.—Colvin.

83. A prisoner being convicted of enticing a woman into a jungle, and leaving her there after severely wounding her, from some motive not clearly ascertained, was sentenced to ten years' imprisonment with labour in irons. *Mt. Rajkuleea* v. *Oodkurun Singh.* 23d Nov. 1849. 6 N. A. Rep. 198.—Dunbar.

II. Bombay Law.

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1. *Accessaries.*

84. *B*, the wife of *C*, being charged, as an accessary before the fact, with instigating the murder of *D*, was sentenced by the Sessions Judge to be imprisoned for life. Held, that *B* was not an accessary before the fact to the murder of *D*, of which she had no foreknowledge; and that the defect not being one of form, the prisoner *B* must be acquitted. *Government* v. *Govinda Bin Ballajee and another.* 31st May 1828. S. F. A. Rep. 9.—Romer & Sutherland.

85. Conviction against accessaries charged with concealment of murder after the fact, is punishable, although no conviction has been recorded against the principal. *Case of Veergur Sumboogur and another.* 20th June 1842. S. F. A. Rep. 147.—Giberne & Bell.

86. Two prisoners convicted of concealment of murder after the fact were sentenced to transportation for life. *Ibid.*

87. In a case of murder, the principal escaped, but the accessary was brought to trial and convicted, and sentenced by the Sessions Judge to nine years' imprisonment with labour, and to two months of solitary confinement. The Court of Sudder Foujdary Adawlut confirmed the sentence of the Sessions Judge, but remarked that the better course would have been to have postponed the trial, and to have offered a reward for the apprehension of the principal. *Case of Ooma Kome Mahadoo.* 20th Feb. 1843. S. F. A. Rep. 169.

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2. *Adultery.*

88. A Christian cannot be punished criminally for adultery, in any of the Courts of the Honourable East-India Company within the Presidency of Bombay.[1] *Case of Bernard*

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[1] And see Constructions No. 81 & No. 828.

[1] The offence of adultery can only be tried in the Criminal Courts of the Honourable Company when it is punishable by the religious law of the offender, under par. 7. of Cl. 1. of Sec. 1. of Reg. XIV. of 1827. In the above case, the offender being a Christian, the Courts had

Peaform. 16th Nov. 1846. S. F. A. Rep. 266.—Le Geyt & Grant.

3. *Affray.*

89. In an affray, which was consequent on a boundary dispute between the villagers of Kookud and Adurka, seven persons were killed and six wounded. Thirty prisoners were brought to trial, and fifteen convicted by the Sessions Judge, and sentenced to transportation for life. Held, by the Sudder Foujdary Adawlut, that as the villagers of Adurka had in the first instance endeavoured to settle the dispute by treaty, and had throughout the affray acted on the defensive, they were entitled to an acquittal. But that, on the other hand, the villagers of Kookud, who from the first were the aggressors, and with whom the affray originated, were deserving of punishment. The Court therefore selected three prisoners, inhabitants of Kookud, and confirmed the sentence of transportation upon them, and recommended the other prisoners to Government for a mitigated punishment of four years' imprisonment. These periods of imprisonment were finally further mitigated by Government. *Case of Maunsing and others.* 20th Feb. 1843. S. F. A. Rep. 163.—Bell & Pyne.

4. *Assault.*

90. The prisoner was convicted by the Sessions Judge of a serious assault, and sentenced to suffer fourteen years' imprisonment with labour. Held, by the Sudder Foujdary Adawlut that the fact of the prisoner being at the time he committed the assault under illegal restraint was a circumstance of extenuation. Sentence accordingly mitigated to four years' imprisonment without labour. *Case of Sucaram Wullud Ramchunder Dhoklay.* 18th May 1840. S. F. A. Rep. 135.—Marriott, Bell, & Giberne.

5. *British Subject.*

91. The Magistrate of a Zillah or district, being also a Justice of the Peace, can alone determine or convict upon complaints against European British subjects, to the extent specified in the 53d George III. c. 155. Sec. 105. *Case of Edward Verling.* 21st March 1842. S. F. A. Rep. 145.—Bell & Giberne.

92. The prisoners were charged with three gang robberies, the first and second committed within the territory of the Honourable East-India Company, and the third within that of his Highness the Guickwar. On apprehension, they were tried and convicted on the first and second charges by the Judge of Surat, and sentenced to five years' imprisonment, and, at the expiration of that period, they were ordered to be delivered over to the authorities of his Highness the Guickwar. One of the prisoners claiming to be a British subject under Sec. 5. of Reg. XI. of 1827; it was held, that the *onus probandi* in the case rested with the prisoner. *Case of Bapooreea and Khurja.* 18th March 1845. S. F. A. Rep. 213.—Bell & Brown

6. *Child Stealing.*

93. Three prisoners being convicted of stealing a female child, two were sentenced to three years' imprisonment with hard labour; and the third, under mitigating circumstances (age and infirmity), to one year of ordinary imprisonment. *Yemajee Bin Kukhojee* v. *Luximon Bin Ballajee and others.* 14th Oct. 1829. S. F. A. Rep. 35.—Baillie & Henderson.

7. *Coin, Counterfeiting the*

94. Held, that coining gold Venetians, which are not used as current coin in India, is not an offence punish-

no criminal jurisdiction in regard to the offence. Act II. of 1845 only defines a punishment for persons already convicted.

able under the provisions of Sec. 18. of Reg. XIV. of 1827. *Case of Purushram Wullud Govindshett.* 11th May 1835. S. F. A. Rep. 94. —Baillie & Kentish. (Elliott dissent.)

95. The mere having base coin in possession without uttering the same is not a penal offence under the provisions of Sec. 19. of Reg. XIV. of 1827. *Case of Sheololl Nurbheram.* 11th Jan. 1836. S. F. A. Rep. 106.—Baillie & Greenhill.

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8. *Concealment of Murder.*

96. The prisoner was acquitted of concealment of murder, on the grounds that the body of the deceased had never been found, and that there was no proof of a murder having been committed, beyond the admission of the prisoner, that one of the principals told him that such was the fact. *Case of Toteya Bin Rachya.* 9th June 1845. S. F. A. Rep. 219.—Bell & Pyne. (Hutt dissent.)

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9. *Confessions.*

97. Where it appeared that one of the prisoners had been induced by persons, wholly unauthorised, to confess to the crime of gang robbery with murder, under promises of pardon; it was held, that a confession so taken could not be received as evidence against the prisoner, and, in the absence of other proof, he was acquitted. *The Inhabitants of Oojut* v. *Purthum Hurya and others.* 20th Feb. 1829. S. F. A. Rep. 28. —Anderson & Henderson.

98. The prisoner was induced to give information against a gang of robbers of which he was a member, under hopes and promises of pardon and reward, held out to him by the *Patéls* of a village which had been plundered by the gang. This course received the countenance of the *Kumavisdár* and of the Magistrate. It was ruled by the Sudder Foujdary Adawlut, that any subsequent confession made by the prisoner in consequence of such hopes and promises was inadmissible, and that the prisoner must be acquitted. *Ragoonath Wasun* v. *Mota Bhaosing.* 20th Feb. 1829. S. F. A. Rep. 30.—Anderson & Henderson.

99. A prisoner on his trial for highway robbery made a free and voluntary confession, but urged that eighteen months previously a confession had been extorted from him by maltreatment. Held, that his subsequent confession was not invalidated by the maltreatment he had sustained eighteen months previously, and the prisoner was accordingly sentenced to five years' imprisonment with labour. *Government* v. *Lukkria Wullud Jakkojee.* 8th Feb. 1831. S. F. A. Rep. 55.—Ironside, Anderson, & Baillie.

100. The confession of one prisoner is not evidence against another. *Case of Bunn Hurree and another.* 3d Jan. 1839. S. F. A. Rep. 128. —Anderson, Pyne, & Greenhill.

101. It appearing that one of the prisoners in this case had been induced to confess to the crime of gang robbery under a promise of pardon unauthorisedly given; the Sudder Foujdary Adawlut held, that a confession so obtained was not admissible in evidence against the prisoner, and in the absence of other proof he was acquitted. *Case of Kusla Jeejee and others.* 16th Oct. 1843. S. F. A. Rep. 191.—Simson & Hutt.

102. Although confessions improperly obtained are not admissible in evidence, yet any facts or testimony which may be brought to light and obtained in consequence of such confessions may be received in evidence. *Ibid.*

103. Confessions of prisoners ought to be taken down in their own words, and not to be dictated. *Case of Poonjea Wullud Lalloo and others.* 9th Sept. 1845. S. F. A. Rep. 222.—Le Geyt.

104. Two accessaries to murder, in their confessions, which were the

only evidence against them, admitted their guilty knowledge before, as well as after the fact, but urged that they were deterred from disclosing that knowledge by fear of personal violence from the principal. Held, that this circumstance qualified their confessions, and therefore must be admitted as an extenuation of their guilt, the law requiring confessions to be taken strictly as a whole. Mitigated sentences were accordingly passed. *Case of Moobaruck Wullud Oomer Seedee and others.* 9th Dec. 1845. S. F. A. Rep. 234.—Bell, Pyne, and Brown.

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10. *Conspiracy.*

106. The concealment of conspiracy after the fact is not a penal offence under the provisions of Cl. 5. of Sec. 1. of Reg. XIV. of 1827. *Case of Ruttunjee Hurreebhaee and others.* 11th Feb. 1840. S. F. A. Rep. 133.—Bell & Greenhill.

107. Three prisoners, who were empanelled as members of an inquest held on the body of a person who had been murdered, purposely returned a false verdict, stating that the deceased committed suicide: these persons, with a fourth, who drew out and wrote the inquest report, knowing it to be false, were indicted for conspiracy, and, being convicted, were severally sentenced to two years' imprisonment with hard labour. *Case of Fukeera Wullud Jeewun and others.* 18th Nov. 1844. S. F. A. Rep. 203.—Bell, Hutt, & Brown.

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11. *Culpable Homicide.*

108. The prisoner was convicted of murder by the Sessions Judge, and sentenced to transportation for life, on evidence shewing no premeditation, but that the deed was the result of passion on sudden provocation. It was held by the Sudder Foujdary Adawlut, that the prisoner was only guilty of culpable homicide, and the sentence was reduced accordingly to ten years' imprisonment with hard labour. *Gungia Wullud Bussiah* v. *Howliah Bin Pursapa.* 3d Oct. 1831. S. F. A. Rep. 60.—Barnard & Baillie.

109. The prisoner killed with a sword a thief he found at night stealing his *Chillees* in a field. Held by the Sudder Foujdary Adawlut, that this was not a case of justifiable homicide, but of culpable homicide; it being proved that the prisoner's own life was not in danger, that the deceased offered no resistance, and did not even attempt to escape, and that the prisoner might have apprehended the deceased without resorting to extreme means, which the circumstances of the case did not warrant. *Case of Luxmappa Bin Appana.* 7th Jan. 1845. S. F. A. Rep. 211.—Simson & Brown.

110. In a case of murder or culpable homicide, where death ensued 180 days after the wounding, it was ruled by the Sudder Foudjary Adawlut, that the prisoner was liable to punishment by the Regulations, as death had taken place within six English calendar months after the assault. *Case of Hussan Nuthoo and another.* 18th May 1846. S. F. A. Rep. 254.—Bell & Hutt.

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12. *Dacoity.*

111. The prisoner was convicted of two gang robberies, one committed twelve, and the other five years previously to the trial; but, having since led a reformed life, and become a peaceful cultivator of the soil, and carried a good character among his fellow villagers, he was only sentenced to be imprisoned for the nominal period of one day, and to furnish security. *Case of Oomajeerow Bin Donedabarow.* 21st Oct. 1833. S. F. A. Rep. 85.—Anderson, Baillie, & Greenhill.

112. The bare act of a gang going out with intent to commit a gang robbery does not constitute an

attempt under Sec. 38. of Reg. XIV. of 1827. *Case of Crustna Bin Succhett and others.* 13th Oct. 1835. S. F. A. Rep. 103.—Marriott & Greenhill.

113. Where the Sudder Foujdary Adawlut found that no attempt or act followed the expressed intention of the prisoner to instigate a gang robbery the prisoner was acquitted and discharged.[1] *Case of Myputtee Wullud Wacknack.* 25th Oct. 1838. —Anderson & Greenhill. (Giberne dissent.)

114. The prevalence of gang robberies within any particular district was held to be a circumstance of aggravation, and a matter deserving of weight in passing sentence. *Case of Babjia and others.* 17th Oct. 1842. S. F. A. Rep. 156.—Giberne & Pyne.

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13. *Escape from Custody.*

115. Wilfully permitting an escape from custody is punishable under Sec. 3. of Reg. V. of 1831. But if the escape be occasioned by carelessness or neglect of duty, the officer is only amenable to Sec. 8. of Reg. XII. of 1827, for misconduct. *Case of Tulwar Doorgah Bin Doorgah and others.* 25th May 1840. S. F. A. Rep. 137.—Marriott & Giberne. (Bell dissent.)

116. The prisoners having been liberated from legal custody by some rebels, who attacked the town of Chickodee, made their escape. On being again apprehended, they were tried for escaping from custody, convicted, and sentenced by the Sessions Judge to one year's imprisonment without labour; this sentence was, in consideration of the circumstances of the case, mitigated by the Sudder Foujdary Adawlut to one month's imprisonment. *Case of Ramba and others.* 12th Nov. 1845. S. F. A. Rep. 229.—Pyne, Hutt, & Brown.

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14. *Evidence.*

117. The confession of an accomplice is evidence only against himself, and can in no way be made use of against another. *Suroop Sook* v. *Suntram Urf Jeram Bin Sidgun.* 20th Sept. 1827. S. F. A. Rep. 1. —Romer & Anderson.

117*a*. The possession of stolen property by a prisoner four years after a robbery is not presumptive evidence of his having committed the robbery. *Ibid.*

118. It is unnecessary, on a prisoner pleading *guilty*, and confirming his confession before a Sessions Court, to swear the witnesses again to their former depositions, the regulations simply requiring the evidence in the case (or such part of it taken before any competent authority as, if admitted to be true, would prove the charge) to be read over to him.[2] *Dajee Agurwalla* v. *Ballajee Bin Suddoo Aweer.* 16th Nov. 1827. S. F. A. Rep. 3.—Romer, Sutherland, & Ironside.

119. If a prisoner before a Court of Sessions plead *not guilty*, it is irregular to cause the depositions made by witnesses before a Magistrate to be recorded as evidence against the prisoner, on the declarant's being re-sworn and confirming the same before that Court; the proper course of procedure being, to take and record every oral declaration *de novo* direct from the declarant. *Shahjee Wullud Ali Khan* v. *Johra Kome Babnya.*—11th July 1828. S. F. A. Rep. 16.—Romer & Sutherland.

120. It is the practice of the Sudder Foujdary Adawlut to return a case to the Zillah Court for further evidence when such course is deemed desirable. *Ibid.*

121. In all criminal cases the pri-

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[1] See the Court's interpretation of Cl. 5. of Sec. 1. of Reg. XIV. of 1827, dated 25th Oct. 1838.

[2] See Reg. XIII. 1827, Sec. 37. Cl. 2.

soner should be asked if he has any witnessess to call in his defence, and the question and reply should be entered on the record. *Case of Bugsia Bin Baluppa.* 2d Nov. 1833. S. F. A. Rep. 88.—Anderson, Baillie, & Greenhill.

122. Held, that a Roman-Catholic Priest could not be compelled under Cl. 4. of Sec. 36. of Reg. XIII. of 1827, to make disclosures of death-bed confessions, communicated to him in his priestly capacity of confessor. *Case of Alice Fernanda and others.* 25th Sept. 1835. S. F. A. Rep. 99.—Sutherland & Marriott. (Greenhill dissent.)

123. A female prisoner was convicted of the murder of her husband, on the violent presumptions of the case; it being proved that she was alone in the house with the corpse of her husband on the morning after the murder; that the house had only one door, which was fastened inside; and that the wounds on the body of the deceased were of such a nature, that they could not have been self-inflicted. Sentence, imprisonment for life. *Case of Bunna Hurree and another.* 3d Jan. 1839. S. F. A. Rep. 128.—Anderson & Pyne. (Greenhill dissent.)

124. The dying declaration of a person, if duly attested, is admissible as evidence, although not taken in the presence of the prisoner. *Case of Wittoo Wulud Bappoo* 13th April 1841. S. F. A. Rep. 141.—Marriott, Bell, Giberne, & Greenhill.

125. Held, that if the evidence of an accomplice be satisfactorily corroborated in regard to some of the prisoners, his testimony may be acted upon with respect to other prisoners, although, as far as it affects them, it may have received no confirmation. *Case of Babjia and others.* 17th Oct. 1842. S. F. A. Rep. 156.—Giberne & Pyne.

126. Three prisoners were convicted of murder, and sentenced to transportation for life, upon the dying declaration of the deceased, given in solemn affirmation before a constituted authority. *Case of Appa and others.* 10th July 1843. S. F. A. Rep. 174.—Simson & Pyne. (Hutt dissent.)

127. The failure on the part of the prisoner to prove an *alibi* is evidence for the prosecution. *Case of Shewpooree Kullianpooree.* 17th July 1843. S. F. A. Rep. 178. — Pyne, Simson, & Hutt.

128. The deposition of a murdered man, taken by a competent authority shortly before death, and proved by two or more witnesses, is admissible evidence, even if taken in the absence of the accused. *Case of Ambia Bin Kan Matra.* 22d April 1844. S. F. A. Rep. 193.—Bell, Hutt, & Brown.

129. Where two important witnesses in a case of murder had died, the Sessions Judge took evidence to prove this fact, and then proceeded to read and record their depositions, calling the attesting witnesses to prove their authenticity. This course renders their depositions legal and valid evidence. *Case of Puddoo Bin Bappoo.* 17th Nov. 1845. S. F. A. Rep. 231.—Pyne, Hutt, & Brown.

130. In a case where four prisoners were tried for treason, three were convicted on the clear and positive testimony of two pardoned accomplices, supported by other corroborative evidence, and the admissions of the three prisoners themselves; and it was held, in regard to the fourth, who denied the charge, that since the truth of the evidence of the accomplices had been unequivocally established with respect to the other three prisoners, its veracity might be justly presumed against the fourth, who was accordingly convicted and sentenced to death. *Case of Bhowkeng and others.* 15th Dec. 1845. S. F. A. Rep. 240. — Pyne & Hutt.

131. Warrants in execution of former convictions are not to be

brought forward as evidence for the prosecution; but, after conviction, due weight is to be given to them in awarding punishment. *Case of Hur Patell Bin Chind Patell.* 27th July 1846. S. F. A. Rep. 255. —Hutt & Grant.

132. In a case where a *Mhar* was charged with administering poison to cattle; it was held, that proof of the mere facts of his administering a certain substance, and of the cattle dying shortly afterwards, was insufficient for a conviction, without evidence of the nature of the substance administered. *Case of Pandoo Wullud Bappoo.* 28th Sept. 1846. S. F. A. Rep. 261.— Hutt & Le Geyt.

133. The sufficiency of the evidence to warrant a finding of the facts charged must in all cases be determined by the trying authority; and on this point it is not competent to him to obtain the assistance of the Sudder Court. *Case of Khundoo Wullud Kubbajee.* 23d Nov. 1846. S. F. A. Rep. 268.—Hutt & Grant.

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15. *Execution.*

134. The execution of a woman sentenced capitally, when pregnant, is to be deferred until forty days after her delivery. *Case of Mukowa.* 19th Dec. 1836. S. F. A. Rep. 113.—Marriott, Baillie, & Elliot.

135. The prisoner was convicted of the murder of the *Jamadár* of the Ghaut Police, and sentenced to be executed, for the sake of example, at the place where the murder was committed. *Case of Puddoo Bin Bappoo.* 17th Nov. 1845. S. F. A. Rep. 231.— Pyne, Hutt, & Brown.

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16. *Fine.*

136. The prisoner was fined Rs.50 for defrauding the Post-office, by inclosing a private letter in a package attested to contain nothing but law papers. Held, by the Sudder Foujdary Adawlut, that as the penalty for this offence, specified in Act. XVII. of 1837, was positive, no smaller fine than Rs. 50 could be awarded under its provisions. *Case of Pandoorung Vishwanath.* 28th Nov. 1842. S. F. A. Rep. 162.—Bell & Hutt. (Giberne dissent.)

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17. *Forgery.*

137. Forging and uttering a note or order with a fraudulent intent was punished with public disgrace, and two years' imprisonment with labour. *Government* v. *Babunshette Poondlickshette.* 8th Oct. 1829. S. F. A. Rep. 34.—Anderson, Baillie, & Henderson.

138. Individuals falsifying their books of accounts, and producing them as evidence in a Court of Justice with a fraudulent intent, were held by the Sudder Foujdary Adawlut, to have committed forgery as defined in Cl. 1. of Sec. 17. of Reg. XIV. of 1827. *Case of Dajee Wullud Yemajee and another.* 24th Dec. 1838. S. F. A. Rep. 121.— Anderson & Greenhill. (Pyne dissent.)

139. Held, that a person passing separate deeds of sale of the same property to two different parties, and thus obtaining money upon both, was not guilty of forgery as defined in Cl. 1. of Sec. 17. of Reg. XIV. of 1827. *Case of Ragoo Balcristna, Sane.* 18th July 1842. S. F. A. Rep. 151.—Giberne, Pyne, & Bell.

140. On a question, whether a charge of forgery could be sustained on a deed which had ceased to be of any value, by being superseded by another deed of later date, specifically cancelling all to which the former one referred; it was held, by the Sudder Foujdary Adawlut, that, as the former deed had been falsely altered, and applied to a fraudulent purpose, the forgery was complete. *Case of Pandoorung Vittul and ano-*

ther. 24th April 1843. S. F. A. Rep. 171.—Simson & Hutt.

18. *Infanticide.*

141. The desertion of a child by its mother does not amount to murder, nor even to an attempt to murder, unless the circumstances attending the desertion shew that it is done with the intention of causing its death. *Case of Gunga.* 3d Jan. 1839. S. F. A. Rep., 125. — Anderson, Pyne, & Greenhill.

142. The prisoner was convicted of child murder, and sentenced by the Sessions Judge to imprisonment for fourteen years with labour and disgrace: this sentence was annulled by the Sudder Foujdary Adawlut, on the ground that it was contrary to law to award a punishment for murder not laid down in Cl. 4. of Sec. 26. of Reg. XIV. of 1827, which was positive; and a final sentence of two years' solitary imprisonment was passed by the Court. *Government* v. *Amba.* 7th Dec. 1827. S. F. A. Rep. 4. — Romer, Sutherland, & Ironside.

143. The crime of a mother murdering her newly-born infant at its birth was, under the circumstances of the case, punished by two years' solitary imprisonment. *Government* v. *Baee Muthee.* 16th July 1829. S. F. A. Rep. 32.—Anderson & Henderson.

144. The prisoners, *A* and *B*, were charged with infanticide, and *C* as an accessary before the fact. It was proved that *A* gave birth to an illegitimate child, which, at the instigation and advice of *C*, the father of the child, was murdered by the prisoner *B* in *A*'s presence. The prisoners *C* and *B* were sentenced to transportation for life as being the most culpable, and *A*, in consideration of her youth, (fifteen years of age), and also of the influence exercised over her by *C*, a *Bhaggat*, or reputed wizard, and by *B*, her mother, to two years' imprisonment. *Case of Chimee and others.* 6th Jan. 1845. S. F. A. Rep. 206.—Bell & Brown, on reference to Government.

19. *Informer.*

145. It is irregular for Judicial or Magisterial authorities to connect themselves in any way with informers, especially in cases which may come under their own cognizance, although the motives are the detection of crime, and a desire to further the ends of public justice. In a case of forgery discovered by such means, the practice was condemned by the Sudder Foujdary Adawlut as highly objectionable. *Government* v. *Bappoojee Luxumun Sonee.* 30th July 1828. S. F. A. Rep. 19.—Sutherland, Anderson, & Kentish.

20. *Insanity.*

146. The prisoner was charged with murder, and convicted before the Criminal Judge; but it appearing that at the time of the commission of the offence the prisoner was insane, sentence was stayed, and a reference made to the Superior Court for instructions. Held by the Sudder Foujdary Adawlut, that this procedure was erroneous, as the prisoner was entitled to an acquittal on the ground of the proof of insanity. The Court accordingly acquitted the prisoner, but directed his detention until the Civil Surgeon should certify that he had become sane. *Government* v. *Oomer Wullud Auwad.* 29th Jan. 1829. S. F. A. Rep. 23. —Romer, Anderson, & Henderson.

147. Where a prisoner was found guilty of having caused the death of another by wounding, being himself at the time in a state of insanity, the Court issued a warrant to the Sessions Judge to detain the prisoner in safe custody until such time as he should be declared, by competent medical authority, to be in a fit state to be set

at large.[1] *Case of Sheik Ghasee Wullud Sheik Boolla.* 16th Sept. 1833. S. F. A. Rep. 79.—Anderson, Baillie, & Greenhill.

148. In all criminal cases where prisoners shew indications of insanity, either at or after trial, it is essential to inquire into the state of the prisoner's mind at the time of the commission of the offence laid to his charge. *Case of Hoozoorshah Wulud Muzarallashah.* 13th Dec. 1836. S. F. A. Rep. 111.—Marriott & Greenhill.

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21. *Intoxication, offences committed in a state of.*

149. The prisoner, while in a state of intoxication, stabbed to death a person who interfered in a dispute between his father and the prisoner. Held, that the prisoner was guilty of murder, and that his plea of drunkenness was no excuse for the crime committed. Sentence, transportation for life. *Case of Oushea Wullud Sawia Bheel.* 23d Sept. 1833. S. F. A. Rep. 81.—Anderson & Greenhill.

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22. *Jhansa.*

150. A prisoner tried and convicted, in five separate instances, of having committed the crime of *Jhansa*, was punished with five years' imprisonment with labour. *Nurrotumpooree Byragee.* v. *Narron Nuthoo.* 24th Sept. 1828. S. F. A. Rep. 21.—Sutherland & Kentish.

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23. *Jurisdiction.*

151. The village Revenue Officers of any *Saranjám* village within the Zillahs of the Bombay Presidency, when there is no special engagement to the contrary, are liable to the ordinary Criminal Courts for revenue offences. *Case of Rowjee Wullud Abbajee and others.* 24th July 1838. S. F. A. Rep. 117. —Giberne & Pyne.

152. A prisoner who had been sentenced by the Political Agent at Sawunt Warree, under the orders of the Honourable the Governor in Council of Bombay, to be transported for life, returned from transportation without a pardon; and upon being apprehended, he was tried by the Sessions Judge of the Konkan, and again sentenced to be transported. Held, by the Sudder Foujdary Adawlut, that this latter sentence was illegal, the Sessions Court never having had jurisdiction in the matter, and the authority by whom the original sentence was passed not being recognised in the Code of Regulations. *Case of Gharroo Bin Dewjee.* 15th Oct. 1840. S. F. A. Rep. 139. — Marriott, Giberne, & Greenhill.

153. The prisoner, who committed a murder in a village belonging to the Nepannee *Jágír* before it lapsed to the British Government, and who was apprehended and brought to trial after its annexation, was acquitted, on the ground of want of jurisdiction, under the provisions of Art. 2. of Cl. 2. of Sec. 3. of Reg. XI. of 1827. *Case of Rama Bin Burmappa.* 9th April 1845. S. F. A. Rep. 215.—Bell & Hutt.

154. The prisoner, a subject of his Highness the Rajah of Satára, was charged before the Sessions Judge of Sholapor with receiving stolen goods at Akulkhote, a town belonging to his Highness, the goods having been stolen within the Honourable East-India Company's territories. Held, that the prisoner, under these circumstances, was exempt from the Court's jurisdiction, and must therefore be acquitted. *Case of Nim-*

[1] See the Court's Circular Order No. 90, dated 22d June 1835; also the Court's Circular Order No. 314, dated 11th Feb. 1845, which directs that no medical officer is to release a criminal, sentenced as a lunatic, from the Civil Hospital on his becoming sane, but that he is to return the criminal to the authority to whom the warrant of the Sudder Foujdary Adawlut for his custody is addressed. And see Act IV. of 1849.—Bellasis.

bia Wullud Roodranack. 27th Oct. 1845. S. F. A. Rep. 227.—Hutt & Brown.

155. The provisions of Reg. XXII. of 1827 are not applicable to all residents in military camps, but to those only belonging to, or connected with, the Bombay Army. *Case of Bernard. Peaform.* 16th Nov. 1846. S. F. A. Rep. 266.—Le Geyt & Grant.

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24. *Killing Witches.*

156. The prisoners were convicted of the murder of a supposed witch, and sentenced by the Sessions Judge to transportation for life. The Court of Sudder Foujdary Adawlut confirmed the conviction, but recommended the prisoners to Government as objects deserving of mercy, on the ground of the gross ignorance and superstition by which they had been influenced, and proposed mitigated sentences, which were finally sanctioned by Government. *Case of Ramjee Wullud Roopya and another.* 17th Sept. 1844. S. F. A. Rep. 201.—Simson & Hutt.

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25. *Magistrates.*

157. It was ruled by the Sudder Foujdary Adawlut, that an Assistant Magistrate in charge of a Zillah was authorised to exercise the full penal powers of a Magistrate. *Case of Gokul Bhawa and others.* 13th Jan. 1834. S. F. A. Rep. 91.—Anderson, Henderson, & Greenhill.

158. Assistant Magistrates, upon whom the full penal powers of a magistrate have been conferred under Act. XIV. of 1835, are still under the control of the Zillah Magistrate, who possesses the power of reviewing the decisions, and mitigating or annulling the sentences of all his Assistants.[1] *Case of Ramajee Bin Kanappa.* 22d Sept. 1845. S. F. A. Rep. 225.—Hutt, Le Geyt, & Brown.

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26. *Marriage.*

159. A girl of fifteen years of age, born of a Portuguese mistress kept by a *Pársí*, was about to marry a *Pársí*, with the consent of her parents, when a Roman-Catholic Priest petitioned the Sessions Judge to prevent the marriage, and claimed the guardianship of the girl until she arrived at a more mature age, on the grounds of the girl having been baptised. Held, by the Sudder Foujdary Adawlut, with the advice of the Advocate-General, that the girl, having attained womanhood, was entitled to marry whom she pleased, and that she should also be allowed to reside with her parents if she wished so to do. *Case of Mariane Pepin.* 22d April 1833. S. F. A. Rep. 72.—Baillie, Henderson, & Greenhill.

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27. *Murder.*

160. *A*, the paramour of *B*, in order to get rid of *C*, the husband of *B*, resolved, with the consent and advice of *B*, to murder *C*. For this purpose, *A*, about dusk, waylays *C*, but one *D* happening to pass along the road, *A* mistakes *D* for *C*, and kills him. *A* is tried for the murder of *D*, and sentenced to death. Held, that this conviction was good in law. *Government* v. *Govinda Bin Ballajee and another.* 31st May 1828. S. F. A. Rep. 9.—Romer & Sutherland.

161. In a case where one hundred and fifty-nine prisoners were tried for the murder of a person supposed to practise sorcery, twelve were convicted by the Sessions Judge of murder, and seventy-three of instigating and aiding in the offence, and the whole eighty-five were sentenced to suffer death; the remaining seventy-four prisoners were acquitted. Held, by the Sudder Foujdary Adawlut, that in consideration of the gross

[1] Reg. XVI. 1827, s. 11. cl. 3.

superstition displayed in this case, it was unnecessary to confirm so severe a sentence on so many deluded beings. The Court therefore selected three prisoners, whom they considered the most culpable, and confirmed the sentence of death passed upon them. The Court also selected four other prisoners, and sentenced them, under circumstances of extenuation, one to transportation for life, and the other three to two years' solitary imprisonment with flogging. *Government* v. *Gunnah Pyah Oorf Cuttree and others.* 20th Sept. 1830. S. F. A. Rep. 45. — Sutherland, Ironside, & Baillie.

162. Five prisoners having been tried and convicted on a charge of highway robbery perpetrated on three *Wanees*, two of whom they afterwards murdered under circumstances of great deliberation and cruelty, were one and all sentenced to death. *Case of Jehan Khan Wullud Chand Khan and others.* 19th Aug. 1833. S. F. A. Rep. 76.—Baillie & Greenhill.

163. The prisoner, a woman of the *Kamati* cast, was tried for murdering a child under circumstances of great atrocity, and, on conviction, was sentenced to death; the Court of Sudder Foujdary Adawlut holding that the prisoner was not entitled to the benefit of Cl. 5. of Sec. 4. of Reg. XIV. of 1827. *Case of Luxumee.* 2d Nov. 1833. S. F. A. Rep. 87.—Anderson, Baillie, & Greenhill.

164. The prisoner was convicted of murdering a *Gosain* while in the act of adultery with his wife, and sentenced to death; but on recommendation to mercy by the Sessions Judge, he was finally acquitted by the Sudder Foujdary Adawlut, on the ground of the extreme provocation given. *Case of Puthoo Jora.* 6th July 1835. S. F. A. Rep. 95.—Baillie and Kentish.

165. The prisoner, a *Brahman*, convicted of murdering a *Brahman* under circumstances of great atrocity, was sentenced to death. *Case of Mahaishwur Bhanjee.* 31st Aug. 1835. S. F. A. Rep. 97.—Marriott & Greenhill.

166. The prisoner being convicted of murder, entirely on circumstantial evidence, the Court affirmed the conviction, but reduced the sentence of death to imprisonment for life. Mr. Greenhill, however, considering the evidence defective, the case was referred back to the Sessions Judge for additional evidence, and thereon a final sentence of imprisonment for life was passed. *Case of Jalum Bamsing.* 29th Feb. 1836. S. F. A. Rep. 107.—Marriott, Baillie, & Greenhill.

167. The prisoners, *A* and *B*; supposing that one *C* had stolen their calf, accused him of the theft, and demanded restitution: a quarrel ensued, and *A* struck *C* a slight blow on the head with his sheathed sword; the next moment *B* drew his sword and mortally wounded *C*. Held, that the conviction of *B* for murder was correct, but that *A* was guilty only of a common assault. *B* was sentenced to transportation for life, and *A* to six months' imprisonment with labour. *Case of Sultan Dullah and others.* 4th Sept. 1839. S. F. A. Rep. 131.—Pyne & Greenhill. (Giberne dissent.)[1]

168. A prisoner was convicted of murder upon circumstantial evidence, and upon the contradictions apparent in his own statements, which clearly proved his defence to be false. Sentence, transportation for life. *Case of Haja Teja.* 4th Sept. 1843. S. F. A. Rep. 182.—Pyne & Simson. (Hutt dissent.)

169. The prisoner, who was convicted of killing the deceased at his own request, was held guilty of murder, and deserving of punishment only short of death. *Case of Myputsing Bin Heerasing.* 18th

[1] Mr. Giberne would have convicted *A* of culpable homicide.

Sept. 1843. S. F. A. Rep. 188.—Simson & Hutt.

170. The prisoner was convicted of murder on evidence which proved that he was last seen with the deceased, dragging him along by the hair, with a drawn sword in his hand; that about ten days afterwards a skeleton was found in the direction the prisoner was seen dragging the deceased, with the skull severed from the body, and some articles of wearing apparel were also found near the skeleton, which were identified as the property of the deceased; that the prisoner had absconded, and his mistress deposed that he admitted to her that he had killed the deceased. Sentence, transportation for life. *Case of Bappia Wullud Rowjee.* 6th Aug. 1844. S. F. A. Rep. 197.—Simson & Hutt.

171. The instigator of a murder is punishable, although no conviction has been recorded against the principal. *Case of Puddee.* 24th April 1845. S. F. A. Rep. 218.—Bell & Hutt.

172. Although, in certain cases, convictions may be had against the concealer and aider in murder, when no conviction has been recorded against the principal, yet so long as a hope can be entertained of apprehending the principal, and the law allows it, it is preferable to postpone the arraignment of the concealer and aider.[1] *Case of Toteya Bin Rachya.* 9th June 1845. S. F. A. Rep. 219. —Bell, Pyne, & Hutt.

173. A gang of men, armed with clubs, set out at night to rob a house, and in the prosecution thereof they murdered a *Suwár*, in order to prevent alarm being given. There was no previous intention to take life, plunder being the evident object of the gang. Held, that they were all guilty of murder, and sentence of death was passed upon the leader of the gang, and of transportation for life on the rest. *Case of Poonjea Wullud Lalloo and others.* 9th Sept. 1845. S. F. A. Rep. 222.—Reid, Hutt, & Le Geyt.

174. Two prisoners, in the prosecution of a robbery, inflicted a wound on a third party, which rendered a surgical operation necessary, and, consequent upon that operation, the patient died. Ruled by the Sudder Foujdary Adawlut that this was murder. *Case of Suntoo Wullud Hybutrao and another.* 5th Oct. 1846. S. F. A. Rep. 262.—Hutt & Le Geyt.

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28. *Perjury.*

175. The prisoner was charged with perjury in making two different and contradictory depositions, the one before the Magistrate and the other before the Sessions Judge. Proof was given that the former was true, and the latter wilfully false, and that the matter of the true deposition was material to the conviction of an offender for robbery; and thereon the prisoner was sentenced to be publicly disgraced, and to be imprisoned for three years with labour. *Government* v. *Moosabhaee Wullud Essabhaee.* 17th Oct. 1831. S. F. A. Rep. 61.—Ironside, Barnard, & Baillie.

176. Although the Code of Regulations of 1827 does not explicitly require that perjured evidence shall be material to any matter in issue, yet it is desirable to state on the record the nature of the proceedings in which the perjury was committed, and by what authority the false evidence was taken, and how far it was likely to affect the matter in issue. *Case of Pulsoo Bin Shabajee.* 19th Aug. 1833. S. F. A. Rep. 78. —Baillie, Henderson, & Greenhill.

177. The prisoner, personating a friend, gave evidence before a Sessions Court under his friend's name. Held, that the prisoner was properly convicted of perjury, though the circumstances, which he falsely deposed to have seen in fact took place.

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[1] See *supra*, Pl. 87.

Case of Luxiah Bin Budiah. 31st July 1837. S. F. A. Rep. 116.—Elliot & Simson.

178. Where the prisoner, personating his brother, swore to the truth of a petition signed by him in his brother's name; it was held, by the Sudder Foujdary Adawlut, that this offence involved both perjury and forgery, and that the sentence passed by the Sessions Judge on a conviction for perjury was correct. *Case of Sopannah Bin Kallajee.* 15th Sept. 1841. S. F. A. Rep. 144.—Marriott, Giberne, & Greenhill.

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29. *Poisoning.*

179. The prisoner being convicted of an attempt to poison her husband, and sentenced by the Sessions Judge to suffer ten years' imprisonment, such sentence was, in consideration of her age (sixteen years), mitigated by the Sudder Foujdary Adawlut to eighteen months' solitary imprisonment. *Ameen Burrekhan* v. *Fatima.* 12th Aug. 1830. S. F. A. Rep. 37.—Sutherland & Ironside.

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30. *Powers of Sessions Judges.*

180. Held, that it is irregular and highly objectionable in a Sessions Judge to interrogate a prisoner on his defence, at his trial, with a view to conviction. *Bhooputtee Wullud Buslingapa* v. *Hooseenee and Nundawa.* 29th Jan. 1829. S. F. A. Rep. 24.—Romer, Anderson, & Henderson.

181. It is irregular for a Sessions Judge to refer a case to a native law-officer for a formal opinion on the weight of the evidence; Sec. 8. of Reg. VIII. of 1831, merely contemplating that the Court should avail itself of the law-officer's opinion upon an isolated point of law or custom, the peculiar functions of the law-officers being to expound the law. *Case of Moodka Bin Murribussappa.* 30th Sept. 1833. S. F. A. Rep. 83. — Anderson, Baillie, & Greenhill.

182. A prisoner was sentenced by the Assistant Sessions Judge of Dhoolia to two years' imprisonment for escape from custody. Held, that this sentence was illegal, as an Assistant Judge has only the powers of a Criminal Judge, and not of a Sessions Judge; and as, by Sec. 24. of Reg. XIV. of 1827, Courts of Circuit, *i. e.* Sessions Judges, are alone authorised to try cases of escape from custody. The Assistant Sessions Judge's proceedings were accordingly quashed, and a new trial ordered. *Case of Lalla Anteram.* 9th March 1835. S. F. A. Rep. 93.—Anderson, Henderson, & Greenhill.

183. It is not competent to an Assistant Sessions Judge to submit a case for the confirmation of the Sudder Foujdary Adawlut with the letter required by Cl. 2. of Sec. 23. of Reg. XIII. of 1827; it being therein enacted, that every such case shall be accompanied by a letter from the *Sessions Judge*, containing any remarks, explanation, or opinion, which the Sessions Judge may consider it expedient to introduce. *Case of Wittoo Wulud Bappoo.* 13th April 1841. S. F. A. Rep. 141.—Marriott, Bell, Giberne, & Greenhill.

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31. *Rape.*

184. The prisoner, on being arraigned on a charge of having ravished and carnally known and abused an infant of nine years of age, set up a defence that the child consented to his committing the act; whereupon it was held by the Sudder Foujdary Adawlut, that the consent of a child of such tender years was immaterial, and the prisoner, on the evidence adduced, was sentenced to be imprisoned and kept to hard labour for the term of fourteen years, and to be twice flogged.[1] *Bhimee Maharin* v. *Hus-*

[1] By the law of England it is felony to carnally know a girl under the age of ten

sha Wullud Yeshnack. 31st May 1828. S. F. A. Rep. 13.—Romer & Sutherland.

32. *Robbery.*

185. A Hindú husband cannot be convicted of robbing his wife, the wife, according to the Hindú Law, being completely under the control of her husband; but a dispute between them regarding their property should be determined by a civil action. *Case of Ootumram Atmaram and two others.* S. F. A. Rep. 259.—Hutt & Le Geyt. (Grant dissent.)

33. *Security for Appearance.*

186. Held, that if there was not sufficient evidence for the conviction of a party charged with an offence, he could not be required, under the provisions of Secs. 25. & 27. of Reg. XII. of 1827, to furnish security for his appearance. *Case of Nunnee and another.* 5th June 1837. S. F. A. Rep. 115.—Marriott & Elliot.

34. *Sentence.*

187. The regulation under which a prisoner is sentenced is always to be quoted. *Suroop Sook* v. *Suntram Urf Jeram Bin Sidgun.* 20th Sept. 1827. S. F. A. Rep. 1.—Romer & Anderson.

188. The prisoners were convicted of the murder of one *A B*, whom they suspected of practising witchcraft, and were sentenced by the Court of Sessions to be imprisoned for life. The Court of Sudder Foujdary Adawlut, taking into consideration the gross ignorance and superstition displayed by the prisoners, and the uncivilized state of the country in which the crime was committed, admitted the belief that sorcery was practised by the deceased as a palliation of the crime, and on this ground recommended the prisoners to the merciful consideration of Government, with a view to a mitigation of the sentences awarded at the requisition of the law. This recommendation received the sanction of Government, and mitigated sentences were passed. *Government* v. *Lohanoo Tambor and others.* 29th March 1828. S. F. A. Rep. 5.—Romer & Sutherland.

189. In all cases where prisoners are sentenced to suffer death, it is required by the Regulations, and by the practice of all Criminal Courts, to set forth and specify the mode in which death is to be inflicted, both in the sentence and in the warrant for carrying the same into execution. *Government* v. *Venkoo Wullud Hurjee Powar.* 22d May 1828. S. F. A. Rep. 8.—Romer & Sutherland.

190. In a case where the Sudder Foujdary Adawlut thought the finding of the Judge on Circuit should have been culpable homicide, instead of murder. On a doubt arising whether the Court had power to alter such finding, it was declared, that the Sudder Foujdary Adawlut had the power to alter such finding, when the offence brought in, being of the same nature, was of a less degree than that set out in the original charge. *Jeta Rutna* v. *Nagojee Gaodjee.* 2d Feb. 1829. S. F. A. Rep. 26.—Anderson & Henderson.

years, and a misdemenour to carnally know a girl above the age of ten and under the age of twelve years; and in either case, it is immaterial whether the offence was done with or without the consent of the female. But in India, where females come to maturity so early, this doctrine must be received with considerable caution, and must always be a point to be determined by the Court, or by a jury. And such was the importance attached to this point by the legislature, that by the 9th Geo. IV. cap. 74. (which is an Act for improving the administration of criminal justice within the jurisdiction of Her Majesty's Supreme Courts of Judicature in India), it was enacted, in consideration of the early age at which females in India arrive at maturity, that it shall be felony in any person to carnally know a girl under the age of *eight* years, and a misdemeanour if the girl be above *eight* and under *ten* years of age:—Bellasis.

191. Held, that a sentence of death having been passed by a Sessions Judge, the directing the execution to be carried into effect with the additional marks of public disgrace specified in Cl. 2. 3. & 4. of Sec. 4. of Reg. XIV. of 1827, was no enhancement of the punishment, and therefore might be added at the discretion of the Sudder Court.[1] *Government* v. *Gunnah Pyah Oorf Cuttree and others.* 20th Sept. 1830. S. F. A. Rep. 45.—Sutherland, Ironside, & Baillie.

192. Held, that Cl. 1. of Sec. 7. of Reg. XIV. of 1827, did not confer upon the trying authority the power of commuting a sentence of death to imprisonment for life; such power being reserved for the superior tribunal before which the case must come for confirmation. *Jankee* v. *Mahadoo Bin Kasseeba.* 3d March 1831. S. F. A. Rep. 57.—Anderson, Barnard, & Baillie.

193. In a case where certain prisoners were sentenced to a longer continuous term of imprisonment than fourteen years, not in commutation for a sentence of death, such sentences were ruled by the Sudder Foujdary Adawlut to be illegal, as Cl. 1. of Sec. 7. of Reg. XIV. of 1827 declared that imprisonment shall not be adjudged for a longer period than fourteen years, except that ordinary imprisonment for life may be substituted as a commutation for a sentence of death. *Government* v. *Dowlutta Wullud Bappoo and others.* 26th Dec. 1831. S. F. A. Rep. 64.—Barnard & Baillie.

194. Sentences of death passed by the Sessions Judge on two prisoners for gang robbery with murder were mitigated by the Sudder Foujdary Adawlut to transportation for life, in consideration of three other persons having suffered capitally for the same offence. *Case of Bunna Veera and others.* 24th Nov. 1834. S. F. A. Rep. 92.—Henderson & Greenhill.

196. Held, by the Sudder Foujdary Adawlut, that when the Honourable the Governor in Council once commutes a sentence of death into imprisonment for life, it is not competent to him, on any grounds, to revert to the original sentence. *Case of Mukowa.* 19th Dec. 1836. S. F. A. Rep. 113. — Marriott, Ballie, & Elliot.

197. The provisions of Act II. of 1840 do not authorise a sentence of solitary imprisonment uncombined with imprisonment with hard labour, in cases where the punishment of solitary imprisonment is not prescribed by the general Regulations for the offence committed. *Case of Gunnoo Bin Mahadeo.* 12th Sept. 1842. S. F. A. Rep. 153.—Giberne & Pyne. (Hutt dissent.)

198. The prisoners were charged with treason in having joined a body of armed insurgents raised and employed to make war against the Rajah of Kolapur and his allies the British Government of Bombay; in having attacked and plundered the town of Chickodee, situated within the British territory; and in having taken formal possession of the said town in the name of one Chimma Sáhib, whom the insurgents wished to set up on the throne of Kolapur, in opposition to the authority of their lawful prince and that of the British Government. Sentence of death, passed upon one of the leading criminals in this treasonable attack, was commuted by the Honourable the Governor in Council to transportation for life, on the ground that he was a subject of the Kolapur state, and not a British subject. *Case of Jewun Row Bin Ramchunder Row Ghorepuday and others.* 20th Jan. 1846. S. F. A. Rep. 244.

199. A sentence of death and confiscation of property, passed on the prisoner on conviction of treason, was mitigated by the Honourable

[1] But see Act II. of 1849, which abolishes disgrace as a punishment.

the Governor in Council to a term of ten years' imprisonment, in consideration of the prisoner's having been so severely wounded at the time of his apprehension as to render him a cripple. *Case of Hurree Bin Baboo Koteykur.* 4th May 1846. S. F. A. Rep. 251.—Bell & Grant, confirmed by Government.

200. The prisoner was convicted of perjury, but, in consideration of the relationship[1] (daughter-in-law and father-in-law) existing between the prisoner and the party against whom she was called upon to give evidence, the Sudder Foujdary Adawlut mitigated a sentence of two years' imprisonment, passed by the Sessions Judge, to one month. *Case of Zeemee.* 18th May 1846. S. F. A. Rep. 252.—Bell & Hutt.

201. The youth of a convict was held to be a circumstance of mitigation in awarding punishment. *Case of Suntoo Wullud Hybutrao and another.* 5th Oct. 1846. S. F. A. Rep. 262.—Hutt & Le Geyt.

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35. *Torture.*

202. In a case where two prisoners were charged with aiding a *Mahalkarrí* in the abuse of his official authority, by torturing a person to extort a confession, an objection was taken on their behalf that such aiding was not punishable under the interpretation on Cl. 5. of Sec. 1. of Reg. XIV. of 1827. Held, by the Sudder Foujdary Adawlut, that the interpretation cited was limited to offences against the Revenue Regulations, and did not extend to other criminal acts. *Case of Trimbuck Khrishnandothers.* 18th Aug. 1846. S. F. A. Rep. 256.—Hutt & Le Geyt. (Grant dissent.)

36. *Trial.*

203. All trials before Sessions Judges are to be conducted agreeably to the forms prescribed for Courts of Circuit in Chap. iii. of Reg XIII. of 1827. *Sawai Purbhoo and another* v. *Wittoojee Bin Rugshette and others.* 3d Jan. 1831. S. F. A. Rep. 52.—Sutherland, Ironside, and Baillie.

204. When a Sessions Judge meets with a case, which, from doubt in the application of the law, or other sufficient cause, he may consider to be expedient to be decided by the Court of Sudder Foujdary Adawlut, it is irregular to submit the same without recording a finding against the prisoner; and in a case where this irregularity of procedure was noticed by the Sudder Foujdary Adawlut, the case was returned to the Sessions Judge to complete his record to the extent required by Cl. 2. of Sec. 22. of Reg. XIII. of 1827. *Government* v. *Lukkria Wullud Jakkojee.* 8th Feb. 1831. S. F. A. Rep. 55.—Ironside, Anderson, & Baillie.

205. The summary disposal of a criminal case without keeping a record of the proceedings, where the punishment awarded exceeds the limitation prescribed by Sec. 14. of Reg. XII. of 1827, was held to be illegal. *Case of Damojee Kosajee and others.* 19th Sept. 1836. S.F.A. Rep. 110.—Marriott, Elliot, & Greenhill.

206. Held, by the Sudder Foujdary Adawlut, that it was very desirable to complete a case of murder without any adjournment during the trial, unless to obtain time for consideration before passing sentence. *Case of Eera Bin Chennappa.* 28th Feb. 1843. S. F. A. Rep. 170. —Bell & Pyne.

207. Whenever any weapon or other article is produced at a trial, its connexion with the case, and the place where it was found, should be duly set forth on the record. *Case of Appa and others.* 10th July

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[1] It has also been held by the Sudder Foujdary Adawlut, that the evidence of a child against a parent, and a husband against a wife, and *vice versâ*, should not be taken without especial necessity.—Bellasis.

1843. S. F. A. Rep. 174.—Simson & Pyne.

208. The trying authority entertaining doubts whether the facts as set forth in the evidence amounted to treason, submitted his doubts to the Court of Sudder Foujdary Adawlut without recording a finding against the prisoner. The Court held this proceeding to be irregular, and therefore returned the case to the trying authority to complete his record to the extent required by Cl. 2. of Sec. 22. of Reg. XIII. of 1827. *Case of Khundoo Wullud Kubbajee.* 23d Nov. 1846. S. F. A. Rep. 268.—Hutt & Grant.

37. *Satí.*

209. The prisoners were the first tried for aiding at a *Satí* after the passing of Reg. XVI. of 1830. On the trial the prisoners set up a defence of ignorance of the law, and proved that, owing to the negligence of the *Muamlatdár* of Chickodee (in which district the offence was committed), Reg. XVI. of 1830 had never been duly promulgated. On these grounds the prisoners were recommended by the Sudder Foujdary Adawlut to Government for pardon; but the Government, under all the circumstances of the case, withheld its sanction to the pardon recommended.[1] *Case of Yemajee Bin Suddasheo and others.* 10th Sept. 1832, S. F. A. Rep. 66.—Ironside, Baillie, & Henderson.

38. *Slave.*

210 *Halís*, or bond slaves, who leave their master's service, are only subject to punishment as ordinary servants in the manner laid down in Cl. 3. of Sec. 18. of Reg. XII. of 1827. *Bhugwan and another* v. *Hurrya and others.* 12th Dec. 1830. S. F. A. Rep. 51. — Ironside & Baillie.

39. *Swindling.*

211. The prisoner bought on credit Rs. 2300 worth of jewels from some merchants at Poonah, and then suddenly went to Surat, leaving unpaid a balance of Rs. 1891. On apprehension, the prisoner was convicted, and sentenced by the Sessions Judge, under Sec. 40. of Reg. XIV. of 1827. Held, by the Sudder Foujdary Adawlut, that the Regulation quoted was inapplicable to the offence, the jewels never having been entrusted to the charge of the prisoner, but sold to him. The prisoner was accordingly acquitted. *Case of Navulchund Bin Kullianchund.* 6th Jan. 1834. S. F. A. Rep. 90.—Anderson, Henderson, & Greenhill.

40. *Thuggí.*

212. A gang of fifty organized Thugs issued from their haunts among the independent states of Bundlecund, and made an expedition into the Honourable Company's territories in Khandeish, where they committed four highway robberies, murdered seventeen persons, and robbed them of property valued at upwards of Rs. 20,000. On their return to Hindustán seven of the gang were apprehended by the Magistrate of Mynpooree, and forwarded to Dhoolia, where one prisoner died in jail, and the remaining six were tried, convicted, and sentenced to death by the Sessions Judge. The sentences of four of these prisoners received the confirmation of the Sudder Foujdary Adawlut, and those of the remaining two were mitigated to transportation for life, in consideration of the age of the prisoners, eighteen and twenty years respectively. *Government* v. *Kumblee Wulud Hybuttee and others.* 6th Sept. 1830. S. F. A. Rep. 39. —Sutherland & Ironside.

[1] The prisoners in this case were subsequently pardoned at the request of the Governor-General of India, Lord William Bentinck.

41. *Wounding.*

213. The prisoner, in a fit of rage against a person who had committed adultery with his wife, assaulted and wounded two innocent persons, mistaking each of them successively for the person of the adulterer, and, being convicted, was sentenced, on account of the aggravated nature of the case, to fourteen years' imprisonment. *Murtama and another* v. *Nagana Wardun.* 7th March 1831. S.F.A. Rep. 58.—Anderson & Barnard.

CULPABLE HOMICIDE.—See CRIMINAL LAW, 18. *et seq.* 75. 108. *et seq.*

CURATOR.

1. Held, with reference to the provisions of Sec. 3. of Act. XIX. of 1841 (regarding the appointment of Curators for the protection of property against wrongful possession in cases of successions), that the complainant must appear in person to make the solemn declaration thereby required.[1] *Syed Inaiet Hussein, Petitioner.* 13th April 1842. 1 S. D. A. Sum. Cases, Pt. ii. 26.

CUSTOM AND PRESCRIPTION, INHERITANCE BY. —See INHERITANCE, 16 *et seq.* 32, 33.

CUSTOMS.—See DUES AND DUTIES, *passim.*

DACOITY.—See CRIMINAL LAW, 24, 25. 111 *et seq.*

DAMAGES.

I. IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL. 1.

II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.
1. *Generally,* 2.
2. *For Illegal Attachment.*—See ACTION, 93, 94. 108.
3. *For Libel and Slander.*—See DEFAMATION, *passim.*

III. IN THE SUPREME COURTS.
1. *Interest, in the nature of.*—See POWER OF ATTORNEY, 2.
2. *Liquidated Damages.*—See SHIP, 1.

I. IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

1. Damages were assessed at a gross sum by the Judicial Committee of the Privy Council, no sufficient evidence being furnished in the cause to calculate the exact amount of the loss sustained. *Rajah Burdakanth Roy* v. *Aluk Munjooree Dasiah and others.* 18th Feb. 1848. 4 Moore Ind. App. 321.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *Generally.*

2. In an action for damages instituted under Cl. 8. of Sec. 15. of Reg. VII. of 1799, by a landholder against tenants resisting measurement of lands, the plaintiff may convert the rent to which he is entitled into damages, and obtain judgment on proof. *Ghungapershad Ghose* v. *Ram Fotdar and others.* 13th June 1846. 7 S. D. A. Rep. 263.—Tucker, Reid, & Barlow.

3. The defendant forcibly cut and carried away an indigo crop from the lands of *Ryots* under engagements with the plaintiff. Held, that the plaintiff was entitled to damages under Sec. 3. of Act. X. of 1836. *Hudson* v. *Mascarenhas.* 2d June 1847. S. D. A. Decis. Beng. 190. Dick & Jackson. (Hawkins dissent.)

[1] See Construction No. 1319.

4. A party making advances to his *Ryots* for the growth of indigo acquires thereby a sufficient interest in their crops to enable him to bring an action for damages against any person injuring the crops. *Londale* v. *Nubchundur Koonwur and others.* 26th April 1849. S. D. A. Decis. Beng. 124.—Dick, Barlow, & Colvin.

5. An action will lie for damages and for the recognition of the plaintiffs' claim, as the head of their tribe, in the discharge of which they were interrupted and resisted by the defendants, of the same tribe as themselves. *Rubee Das Manjee and others* v. *Kewul Baboo.* 29th June 1847. S. D. A. Decis. Beng. 290. —Tucker.

6. An action for damages for assault and abuse may be brought in the Civil Courts. *Anna Bibi* v. *Niamut Khan.* 21st Aug. 1847. S. D. A. Decis. Beng. 461.—Tucker, Barlow, & Hawkins.

7. Damages for illegal distraint can be given as a penalty only, under Sec. 6. of Reg. XVII. of 1793, and must be sued for within a year, under the general rule regarding penal damages declared in Sec. 7. of Reg. II. of 1805. *Joychundur Chuckerbutty and others* v. *Sheikh Mundul.* 10th May 1849. S. D. A. Decis. Beng. 147.—Dick, Barlow, & Colvin.

8. Where the plaintiffs brought an action for damages on account of injury occurring to their crops by reason of the act of the defendants, and the latter denied the right of the plaintiffs to the land on which such crops were growing, maintaining that it belonged to them, the defendants; it was held, that the question as to the right of the land ought in the first instance to be decided. *Moorugum and others* v. *Vencatasiengar and others.* 1st July 1850. S. A. Decis. Mad. 39.—Thompson.

9. Semble, an action for damages on account of an inundation caused by the blocking up of a channel in a certain tank belonging to a village should be brought against the proprietors of the village, and not against the cultivating *Ryots. Ibid.*

10. A plaintiff suing for damages for illegal attachment may omit his claim for interest if he please, and such omission cannot be made a ground for dismissal of the claim. *Anundmoee Deabea* v. *Mathooranath and others.* 4th Feb. 1847. S. D. A. Decis. Beng. 40.—Tucker.

11. Parties collusively attaching property for an alleged balance of rent were adjudged to pay damages. *Bholanath Bose* v. *Mt. Bhagabuttee and another.* 6th May 1848. S. D. A. Decis. Beng. 417.—Tucker, Barlow, & Hawkins.

12. Any party can bring an action for damages done to property in his possession, whether he holds the right of property therein or not. *Ramdial Beoparee* v. *Gopal Dass and another.* 5th Sept. 1849. 4 Decis. N. W. P. 303.—Lushington.

13. And where the defendants attached, under Reg. II. of 1806, a quantity of grain in the possession of the plaintiff, which belonged, according to the defendants, to another person, against whom they had a claim, and the plaintiff appeared as an *Uzardár* in the miscellaneous department, and succeeded in recovering the price of the grain which had been illegally attached, and then sued the defendants for damages, alleging that the grain had been sold for less than its value; it was held, that the plaintiff had proceeded regularly, and that it was not incumbent on him to prove his right to the grain by a regular suit as a preliminary to the preferring his claim for damages. *Ibid.*

14. In cases of damage occurring to crops from trespass of cattle, the party injured is bound to complain immediately, and to institute his suit for damages without delay, and to take every means at the time of trespass to secure full and satisfactory evidence of the offence having been

really committed, and the extent of damage done. *Zumeeroodeen Khan and others* v. *Wise and another.* 30th May 1848. S. D. A. Decis. Beng.483.—Dick, Jackson, & Hawkins.

14*a*. Where the effect of a libel has not been injurious to property in which the heir of the person libelled has an interest, but was of the nature of abuse by word of mouth, the Court held that an action for damages commenced by the person libelled could not be revived after his death by his heir. *Bishenpurshad Nandi, Petitioner.* 26th March 1849. 2 Sev. Cases, 477.—Jackson.

14*b*. But semble, if the effect of the libel had been, or might be, injurious to the property in which the heir has an interest, the action by the heir would be maintainable. *Ibid.*

15. Damages by cattle trespass on an indigo plantation, should be assessed with reference to the probable value of manufactured indigo, but according to the circumstances attending the trespass. *Londale* v. *Nubchundur Koonwur and others.* 26th April 1849. S. D. A. Decis. Beng. 124.—Dick, Barlow, & Colvin.

DARPATNÍDÁR.

1. A *Darpatnídár* paying up arrears due by the *Patnídár* can obtain the refund of such sum by regular action, or avail himself of the mortgage lien given to him by law. *Prem Sookh Raee* v. *Kishoon Govind Biswas and another.* 17th Jan. 1849. S. D. A. Decis. Beng. 18.—Barlow & Jackson. (Dick dissent.) *Ramshunker Raee* v. *Premsook Raee and others.* 20th Dec. 1849. S. D. A. Decis. Beng. 473.—Barlow, Colvin, & Dunbar.

2. Where the purchaser of a *Patní Talook,* finding it in the possession of a *Seh Patnídár,* as mortgagee, who had saved it from sale, under Reg. VIII. of 1819, by paying the *Zamíndárí* dues, repaid the mortgagee, and sued the *Darpatnídárs* for the balances, his claim was decreed. *Sheeb Nurain Raee and others* v. *Kishoon Soondree Dasee and others.* 18th March 1850. S. D. A. Decis. Beng. 54.—Dick.

DAWK.

1. In the absence of any stipulation to the contrary; it was held, that the expense of maintaining subordinate *Dawk* establishments, under Sec. 10. of Reg. XX. of 1817, should be defrayed by the farmer of an estate. *Abbott* v. *Collector of Rajshahye and another.* 29th May 1847. 7 S. D. A. Rep. 310.—Tucker, Dick, & Hawkins.

DEBT.

1. A debt being proved on account of money lent for the purpose of performing funeral rites; it was held, that the production of a bond in proof was not necessary. *Phooleil Choobey* v. *Ajaieb Choobey and others.* 6th Feb. 1847. S. D. A. Decis. Beng. 43.—Tucker, Reid, & Barlow.

2. Balances of rent for antecedent years due for a *Patní Talook,* being of the nature of personal debts of the *Talookdár,* the *Talook* itself is not primarily answerable for them. *Furlong, Petitioner.* 31st Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 128. —Hawkins.

DEBTOR AND CREDITOR.

I. Hindú Law, 1.
II. In the Courts of the Honourable Company, 8.
1. *Generally,* 8.
2. *Diet-money,* 17.

I. Hindú Law.

1. The Hindú law binds a son to pay the debts of his deceased father,

even if he have not inherited property from him. *Hurbujee Raojee and others* v. *Hurgovind Trikumdass.* 16th Oct. 1847. Bellasis, 76.—Le Geyt.

2. An adopted son, taking no portion of the inheritance of his natural father, is discharged from having in his own person any liability for his natural father's debts. *Kasheepershad and another* v. *Bunseedhur and others.* 24th Dec. 1849. 4 Decis. N. W. P. 343.—Begbie, Lushington, & Robinson.

3. Where Hindú widows held an estate during life (under a judicial award), but without competency to alienate, except under the usual exception of a defined, necessity, and they contracted a debt on bond; it was held, that the heirs to the estate after the death of the widows were not liable for the debt. *Sheo Gholam Sahoo* v. *Jobraj Singh and another.* 15th Sept. 1847. S. D. A. Decis. Beng. 544.—Rattray.

4. A party succeeding as heir is bound to pay sums raised on loan by the widow of the person from whom he inherits for the *bonâ fide* purpose of liquidating his debts. *Dwarkanath Soor* v. *Goonomonee Dibbea and another.* 10th Dec. 1849. S. D. A. Decis. Beng. 440.—Barlow, Colvin, & Dunbar.

5. All property held by a deceased person, and passing to his heirs, is answerable for such loans, without inquiry as to the means by which the right was acquired. *Ibid.*

6. The practice of the Courts with regard to the liability of a Hindú for claims against his deceased father's estate is, to decree only against such portion of the deceased's property as may have come into the son's hands. *Kunya Lall* v. *Bukhtawar Singh.* 4th May 1846. 1 Decis. N. W. P. 3.—Cartwright.

7 *A* paid a sum of money to the maternal grandmother of *B* as price of a share in her late husband's estate, to enable her to recover another share of such estate from which she had been ousted by the mother of *B*, the widow of her younger son, father of *B*, and for the necessary expenses of the said maternal grandmother. The suit was instituted, and a decree obtained on mutual consent for a certain share: the grandmother refused to fulfil her engagement; whereupon *A* sued her, and obtained a decree and possession of the share he purchased. After 24 years, *B* sued to cancel the sale, on the ground that she had no right to sell, having a grandson alive, and a decree cancelling the sale, and dispossessing *A*, was obtained; whereupon *A* sued *B* for recovery of the purchase-money, with interest equal to the principal, *B* having inherited the estate in question and other property from the grandmother. Held, that a final decision having declared the sale invalid, no claim for the recovery of the purchase-money could be admitted; but that if *B* had inherited any property, real or personal, from the grandmother, which was her own, he was certainly liable for the debt incurred by the grandmother, and due by her. The case was accordingly remanded for investigation on this point. *Nubkishwur Biswas* v. *Ramjoy Ghose.* 18th July 1848. S. D. A. Decis. Beng. 691.—Dick.

II. In the Courts of the Honourable Company.

1. *Generally.*

8. A debtor, declared by a decree jointly responsible with others, cannot claim exemption from further liability on depositing what he considers to be his share of the debt. *Heera Sahoo, Petitioner.* 23d Aug. 1841. 1 S. D. A. Sum. Cases, Pt. ii. 15.—Reid.

8*a*. A debtor, declared by a decree jointly responsible, cannot be exonerated from liability by wishing to pay what he considers to be his quota of the debt, such not being

specified in the decree. *Raujkrishn Surmah, Petitioner.* 21st Sept. 1848. 2 Sev. Cases, 375.—Hawkins.

9. A decree-holder, who has not previously taken out execution of his decree, cannot share with other decree-holders (who have taken out process of attachment) in the proceeds of the sale of the debtor's property. *Goluck Nath Bose, Petitioner.* 27th Dec. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 43.—Reid.

10. A certificate under Act XX. of 1841, is conclusive of the representative title against all debtors to the deceased, and affords them full indemnity to pay their debts to the individual in whose favour the certificate may be granted, without the risk of incurring the liability of a second demand. *Adaitachand Mandal and others, Petitioners.* 17th Aug. 1843. 2 Sev. Cases, 131.—Tucker, Reid, and Barlow.

11. The failure of the first purchaser at a sale in execution of a decree of a Civil Court to make good the purchase-money, does not exonerate the original debtor from any of his liabilities. *Babu Beer Singh, Petitioner.* 2d March 1846. 2 Sev. Cases, 351. 1 S. D. A. Sum. Cases, Pt. ii. 76.—Reid.

12. A borrower is responsible for a debt contracted on the security of land, till it be proved that such debt has been satisfied from the produce of the land, or by other means. *Ram Purshad Chowdhree and others* v. *Jafur Hosein Khan and others.* 17th March 1846. S. D. A. Decis. Beng. 105.—Rattray.

13. It is for a rent-payer, or any other debtor, to prove the payment of the money which he owed. *Hurrischunder Dey* v. *Kenaram Bhoea and others.* 1st Dec. 1847. S. D. A. Decis. Beng. 618.—Hawkins.

13*a*. The adjudged debt of a *Ghátwál* is recoverable by the decree-holder, in execution of his decree, from the profits of the *Ghátwáli* tenure in possession of his heirs, under the provisions of Reg. XXIX. of 1814. *Sartakchandra Dey, Petitioner.* 27th Nov. 1848. 2 Sev. Cases, 423.—Hawkins.

14. The members of a *Tarwaad* taking possession of the estate of the deceased manager of the property render themselves responsible for the debts he had incurred in such management. *Chowcaren Orkattery Coonhy Ahmond and others* v. *Narsimmajee Mookhtar.* 16th July 1849. S. A. Decis. Mad. 17.—Morehead.

15. *A* was a mortgagee of the lands of *C, D,* and *E,* and, at their request, advanced money to satisfy a claim against the lands under a decree held by *B,* and, in order to save the lands from sale. *A* sued *C* for the whole amount. Held, that *C, D,* and *E* were jointly and severally liable for the whole amount, and a decree, if passed against *C,* ought to be for the whole amount, and not for one-third only of the advance, the supposed share of his debt. *Jeesook and others* v. *Mohur Singh.* 17th June 1850. 5 Decis. N. W. P. 121.—Begbie, Deane, & Brown.

16. A mere judgment in the Company's Courts does not bind all the property of a debtor. *Sheikh Imaum Buksh and others* v. *Sheochurn Sahoo and others.* 30th Jan. 1850. S. D. A. Decis. Beng. 9.—Barlow, Colvin, and Dunbar.

16*a*. A decree passed on a mere admission by a mother of a debt due by her husband cannot be executed as binding the person or property of a son after the husband's death. *Maheschandra Ray, Petitioner.* 23d July 1850. 2 Sev. Cases, 599.—Colvin.

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2. *Diet Money.*

17. Diet allowance for a debtor, confined on account of several decrees obtained against him by one creditor, need not be deposited in each case. *Sudder Board of Revenue, Petitioner.* 12th Aug. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 70. —Rattray, Reid, & Dick.

DECLARATION. — See PLEADING, 1 *et seq.*

DECREE.

I. GENERALLY.—See PRACTICE, 232 *et seq.*
II. SUBSTANCE OF.—See PRACTICE, 255 *et seq.*
III. EXECUTION OF.—See PRACTICE, 307 *et seq.*
IV. TRANSFER OF.—See PRACTICE, 326 *et seq.*
V. INTEREST ON.—See INTEREST, 31, 32.
VI. IN APPEAL.—See APPEAL, 146. PRACTICE, 232 *et seq.*
VII. AMENDMENT OF.—See AMENDMENT, 5. PRACTICE, 232.

DEED.

I. HINDÚ LAW, 1.
1. *Generally*, 1.
2. *Of Gift.—See* GIFT, 1 *et seq.*
II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.
1. *Execution*, 2.
2. *Validity*, 3.
3. *Construction of*, 11.
4. *Fraudulent and Void*, 13.
5. *Registration*, 14.
6. *Stamps on Deeds*, 15.
7. *Deed of Compromise.—See* COMPROMISE, *passim.*
8. *Deed of Gift.—See* GIFT, 9.
9. *Proof of Deeds.—See* EVIDENCE, 66 *et seq.*
III. IN THE SUPREME COURTS.
1. *Charterparty.—See* SHIP, 1.
2. *Of Partnership.—See* PARTNER, 1 *et seq.*
3. *Deed of Gift.—See* GIFT, 7.

I. HINDÚ LAW.

1. *Generally.*

1. A deed of purchase, with proof of possession of the property, is preferable, by the Hindú law, to a deed of mortgage of prior date, but without possession. *Gopal Sudasew* v. *Dinkur Abbajee.* 6th Feb. 1845. Bellasis, 58.—Bell, Simson, and Brown.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *Execution.*

2. The signature of a person to a deed, the word "*Sunmookh*" (in the presence of) being written just above it, must be looked upon as the signature of a witness, and does not render such person liable or bound by the terms of the deed. *Rasbeeharee Koonwur and another* v. *Chundrabullee Dibbea and another.* 3d May 1848. S. D. A. Decis. Beng. 403.—Jackson.

2. *Validity.*

3. The validity of a deed having been recognised by a Civil Court, cannot be again inquired into in a second suit instituted by parties who were not plaintiffs in the first suit. *Mt. Mirza Khanum* v. *Radah Kishun.* 26th Aug. 1844. Quoted in 3 Decis. N. W. P. 391.

4. A deed, acknowledged by both parties in a cause, is binding *quoad* such parties, and its genuineness and authenticity cannot be impugned by the Courts. *Mt. Shookor-o-nissa* v. *Hoorun-o-nissa and another.* 8th March 1848. S. D. A. Decis. Beng. 141.—Barlow.

5. A deed of relinquishment of a tenure is not rendered invalid merely because an amount balance, alleged to have been due by the former holders, was not specified in the deed. *Seetaram Raee* v. *Munohur Raee and others.* 3d June 1848. S. D. A. Decis. Beng. 504. — Tucker, Barlow, & Hawkins.

6. Where parties had compromised suits grounded on a certain deed, they were not allowed to deny the said deed, and their liability under it, in a subsequent suit. *Hill*

and another v. *Bamundas Mookerjee.* 24th June 1848. S. D. A. Decis. Beng. 590.—Dick.

7. Held, that where a deed of sale of land had been regularly executed, and the purchase-money paid, such deed could not be set aside merely on the supposition that the transaction was collusive between the parties. *Gootina Soobusspa Chowda* v. *Derum Semita.* 2d July 1849. S. A. Decis. Mad. 9. — Hooper & Morehead.

8. *A*, the plaintiff, obtained a decree against *B* for possession of certain property under a deed of sale. Whilst the suit was pending, other parties, including the defendants *C* and *D*, also obtained decrees against *B* for portions of the same property, and *A* was consequently obliged to sue the decree-holders, who obstructed his possession. *C* and *D* opposed the claim in their answer, but afterwards gave in and acknowledged a deed of renunciation, withdrawing all further opposition. *A* was nonsuited, but renewed his suit against the same parties, grounding his claim against *C* and *D* on the document filed in the former suit. Held, that *C* and *D* could not be allowed to repudiate a document formally presented by them in Court. *Dabeepershad* v. *Mudud Ali and another.* 15th July 1850. 5 Decis. N. W. P. 174.—Begbie, Deane, & Brown.

9. Deeds may in some cases be avoided by objections relating to the consideration on which they are founded, or to the want of consideration; but, generally speaking, the delivery of the deed evidences the completeness of the transaction. *Gowal Dass* v. *Soorajpershad.* 23d Sept. 1850. 5 Decis. N. W. P. 364.—Begbie, Lushington, & Deane.

10. A deed having been admitted as valid in a former decree which has become final, cannot be questioned in a subsequent suit. *Shaik Sooltan Saib Sowdagur* v. *Culpeper.* 31st Dec. 1850. S. A. Decis. Mad. 129.—Morehead.

3. *Construction of.*

11. *A*, a widow, adopted a son; *B*, the next of kin to *A*'s deceased husband, executed an *Ikrár námeh* in favour of *A*, to the effect, that doubts having been raised as to the validity of the adoption, he, *B*, being the next heir, in consideration of receiving immediate possession of a portion of the estate, consented to waive his right to question the validity of the adoption, as well as to relinquish all claim to the rest of the estate on the ground of the adoption being invalid. *B* had sons living. *C*, the next heir after *B*, contested the adoption, and claimed the estate from the widow of the adopted son, as *B* had relinquished his claim. The Pandit considered the *Ikrár námeh* to be a *Ládáví*, or entire relinquishment of the right to inherit. The Court held, that the question of the validity of the adoption did not arise, because, whether legal or illegal, *C* was not entitled to inherit, the *Ikrár námeh* not operating as an entire relinquishment of right to inherit, but only giving up the right of *B* to question the adoption. They also decided that *C* could not benefit by the *Ikrár námeh*, as it related exclusively to the parties by whom it was executed, and was binding on them, and could not in any manner affect the interest of third parties, or establish *C*'s claim, which was dismissed accordingly, without deciding upon the validity of the adoption. *Goluck-nath Chowdree* v. *Mt. Gour Munee Chowdrain.* 7th April 1846. S. D. A. Decis. Beng. 150. — Reid & Jackson. (Dick, J. dissent.)[1]

12. Where a mortgage deed did not contain any clause strictly prohibitory of the mortgagor's right to redeem *within* the period for which

[1] Mr. Dick considered, that under the *Vyavashta* of the Pandit the *Ikrár námeh* operated as a *Ládáví*, that the adoption was not proved, and that consequently *C* was entitled to the estate by right of inheritance.

the property was mortgaged, but was so loosely worded as to admit of interpretation either way; it was held, that the deed should be construed in the sense most favourable to the mortgagor. *Luljoo* v. *Gungoo and another*. 11th June 1850. 5 Decis. N. W. P. 113.—Begbie, Deane, & Brown.

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4. *Fraudulent and void.*

13. A deed executed by the mother of a minor, on his behalf, but whilst his father was living, was held not to be binding on the minor. *Hubeeboonnissa* v. *Sah Rugber Dyal and another*. 19th Aug. 1846. 1 Decis. N. W. P. 112.—Thompson, Cartwright & Begbie.

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5. *Registration.*

14. The mere fact of a deed not being registered does not invalidate such deed, though another deed, executed subsequently, if registered, would be preferred to it. *Toolseeram* v. *Khimma Lall.* 7th Nov. 1846. 1 Decis. N. W. P. 184.—Thompson.

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6. *Stamps on Deeds.*

15. A deed binding one person to pay another Rs. 7 per annum need not be written on stamped paper, and the claimant may recover arrears thereon *ad libitum* without its being stamped. *Baee Manick* v. *Danutram Nundlall.* 28th March 1843. Bellasis, 39.—Bell & Pyne. (Hutt dissent.)

16. *A* purchased property of *B* under a deed of sale, duly stamped and delivered; afterwards *A* transferred the same property to *C*, by indorsing the original deed of sale without any additional stamp. Held, that this indorsement did not amount to a legal and valid transfer under Sec. 10. Reg. XVIII. of 1827. *Bhaskur Chimun Pundit* v. *Tookaram Ruggonath.* 28th Nov. 1843. Bellasis, 50.—Bell, Simson, & Hutt.

17. Where parties gave a lease of lands for the period of the Settlement, with a condition attached thereto that if they failed in their part of the contract the lessees should receive from them Rs. 100 annually until the expiration of the settlement, it was held that the deed was properly stamped according to Rule 29 of Schedule A. of Reg. X. of 1829, and there was nothing to bring the claim under Rule 30 of that Schedule. *Rae Roshun Singh* v. *Dhun Singh and others.* 9th June 1847. 2 Decis. N. W. P. 169—Lushington.

18. Where it was objected by a party that a *Kabúliyat* and a security bond were on the same paper; it was held, that the Lower Court, under the Circular Order No. 216 of the 27th Oct. 1837, and Construction No. 1147, ought to have given the holders of the document proper time to have it duly stamped, instead of deciding thereon in its imperfect state. *Radha Mohun Gosain and others* v. *Putitpabun Banerjea and others.* 22d Feb. 1848. S. D. A. Decis. Beng. 106.—Hawkins.

19. The rule which allows defendants producing unstamped documents, or documents insufficiently stamped, to apply to the revenue authorities to have such documents properly stamped, can only be extended to *plaintiffs* under special reasons. *Mukoond Lal* v. *Radha Kishen and others.* 5th Aug. 1848. S. D. A. Decis. Beng. 744.—Rattray.

20. A deed is not to be rejected in evidence as unstamped if it be written at a time when no stamp-law was in force. *Muharajah Sumbhoonath Singh* v. *Bukshee Domun Lal.* 3d Jan. 1850. S. D. A. Decis. Beng. 2.—Barlow, Colvin, & Dunbar.

21. A transfer of property by sale, by indorsement on a deed, must bear the prescribed stamp under Art.

XVIII. of Schedule A. of Reg. X. of 1829.[1] *Mt. Sheodeye Koonwur* v. *Sheosuhye Singh.* 2d May 1850. S. D. A. Decis. Beng. 169.—Dick, Jackson, & Colvin.

22. Held, notwithstanding the terms of the Circular Order No. 179 of the 17th Jan. 1842, that a suit, founded on a deed with a stamp of improper value cannot be at all received in the Courts, since Sec. 3. of Reg. X. of 1829 lays down that such deed cannot be *pleaded, given, or admitted in evidence. Meer Khoorshed Ali* v. *Syud Kullundar Buksh.* 26th Aug. 1850. S. D. A. Decis. Beng. 424. — Barlow & Dunbar. (Dick dissent.)

23. A deed unstamped, or not bearing the proper stamp *when a suit is brought,* though afterwards properly stamped, cannot be admitted as the foundation of that suit at any stage; and a suit originally resting on such a document must necessarily be dismissed, as being declared wholly bad *ab initio* by the positive terms of Reg. X. of 1829, and notwithstanding the Circular Order of the 7th Jan. 1842, No. 179. *Rajinder Chatterjee* v. *Taramonee Dibbea.* 17th Sept. 1850. S. D. A., Decis. Beng. 487.—Barlow, Colvin, & Dunbar. (Dick & Jackson dissent.)[2]

[1] The Judges remarked in their decision in this case—"This decision, we observe, overrules the practice enjoined in par. 7. Circular Order, 7th Jan. 1842, No. 179."

[2] In this case a full bench had given time to the party to get his document stamped to the proper amount under the Circular Order above quoted. Mr. Dick dissented on the grounds, that an order passed by one full bench of the Sudder Dewanny Adawlut could not be interfered with by another full bench, because he considered it very objectionable to call in question the validity of any act done in accordance with a Circular Order in force. Mr. Jackson considered the deed admissible as bearing the proper stamp when produced, and thought that the case might be remanded to be tried over again, thus treating the document as new evidence; but he did not consider such a proceeding necessary. The Circular Order No. 179, of Jan. 7th, 1842, has been since recalled by the Circular Order No. 19, of the 27th Sept. 1850.

DEFAMATION.

I. Generally, 1.
II. Publication, 4.
III. Action for Defamation, 5.

I. Generally.

1. Mere abusive language, for which the party uttering it had been punished by the magisterial authorities, does not entail that loss of character, prospects, or station in society, for which damages can be demanded. *Sungappa Hoskottee* v. *Yedowappa Oopasse.* 27th July 1841. Bellasis, 20.—Marriot, Greenhill, & Giberne.

2. Libellous expressions having been used by a Christian *feme covert* against a judicial officer, damages were awarded against her and her husband. *Aratoon* v. *Reily.* 16th June 1847. S. D. A. Decis. Beng. 258.—Dick, Jackson, & Hawkins.

3. In an action for damages, preferred by the plaintiff, a clergyman on the establishment, against a party who had gratuitously aspersed his character in a petition filed in Court, the Sudder Dewanny Adawlut confirmed the decree of the Lower Court, which awarded to the plaintiff damages to the amount of Rs. 1000. *Shepherd* v. *Ekhnatheens Paniotty.* 5th Feb. 1848. 7 S. D. A. Rep. 433.—Jackson.

II. Publication.

4. A person who procures or causes the publication of a libel, and all who assist in framing or diffusing it, are implicated in it. *Mackay* v. *Ranee Hursoondree and another.* 11th May 1848. S. D. A. Decis. Beng. 433.—Jackson, Hawkins, & Currie.

III. Action for Defamation.

5. Slander against a female who is not of that rank in life which ren-

ders her seclusion necessary, may nevertheless be visited by damages in a Civil Court, and the slandered party is not restricted to a suit in the Criminal Court for the punishment of the false accusers. *Rana Kamshana* v. *Gour Sing and another.* 13th March 1845. 7 S. D. A. Rep. 193.—Tucker, Reid, & Barlow.

6. Damages were awarded against a party for having falsely accused the plaintiff with *Dacoity;* but a police *Dárógkah,* against whom they were also sought, having acted legally upon that party's information, was held to be exonerated. *Rajah Lukhee Narain Ray* v. *Mudden Mohun Adhikaree and others.* 5th May 1845. 7 S. D. A. Rep. 204. —Tucker, Reid, & Barlow.

7. Plaintiffs had been charged with theft of cattle by the defendants, but had been acquitted by the Magistrate. Held, that they were entitled to bring an action for damages for the injury done to them by the false charge. *Kishengope and others* v. *Bechoo Mundul.* 17th June 1847. S. D. A. Decis. Beng. 265. —Hawkins.

8. In an action for damages for an alleged false charge against a party in a Criminal Court, the Civil Court is not bound by the opinion formed of the case in the Criminal Court. *Munnee Mohun Mundul* v. *Modoosooden Mundul.* 8th June 1848. 7 S. D. A. Rep. 508.— Hawkins.

9. A suit instituted by a party was pending in the Court of the Principal Sudder Ameen. Apprehensive that it would be decided against her, the plaintiff presented a petition to the Judge, praying that her case might be transferred to another tribunal, bringing, in the said petition, charges against the Principal Sudder Ameen of a libellous nature. Held, that the petition could not be considered as a *judicial proceeding,*[1] and that as she chose to bring charges in it which she was unable to substantiate, she must take the consequences. An action of libel based on the petition was admitted, and damages awarded. *Mackay* v. *Ranee Hursoondree and another.* 11th May 1848. S. D. A. Decis. Beng. 433. —Jackson, Hawkins, & Currie.

10. Held, that an action for damages for defamation did not lie against a party accusing another of *Dacoity,* on which charge he had been committed for trial by the Magistrate, but acquitted by the Sessions Judge. *Sonatun Mudduk* v. *Gungagovind Biswas.* 27th May 1848. 7 S. D. A. Rep. 507.—Tucker, Barlow, & Hawkins.

11. Damages for gross abuse may be recovered by a civil suit. *Upoorba* v. *Neemchund Burkundauz and others.* 13th June 1849. S. D. A. Decis. Beng. 197.—Jackson.

12. A plaintiff having first used opprobrious language to the defendant in the pleadings in a previous case between them, cannot bring an action for damages for a libel by the defendant, founded on terms used by him in his reply in such previous case. *Kaleenath Raee* v. *Taylor.* 27th Aug. 1849. S. D. A. Decis. Beng. 364.—Dick, Barlow, & Dunbar.

13. Where an alleged libel was contained in a regular application, made before a competent authority, for transfer of a suit pending in a Judicial Court; it was held, that the proper issue to be tried, is, whether the party had *fair probable* grounds for crediting the allegation charged as libellous; *positive proof* of the truth of the allegation not being necessary in such a case. *Moulvee Abdool Khyr Mohummud Ali Khan* v. *Afran-o-Nissa and others* 8th May 1850. S. D. A. Decis. Beng. 187.—Dick, Jackson, & Colvin.

[1] In the case of *Hedger* v. *Maharahi Kamal Kumari,* 7 S. D. A. Rep. 29, it was held, that defamatory and libellous expressions, when used by a party in the course of a judicial proceeding, are not actionable.

DEFAULT.—See Appeal, 59 *et seq.*; Practice, 217 *et seq.*

DEFAULTER.—See Surety, 4 *et seq.*; Sale, 70, 71.

DEMURRER.—See Practice, 19, 20.

DEOWATTAR.—See Action, 54.

DEPOSIT.—See Action, 48; Interest, 33, 34; Limitation, 21; Sale, 53. 65. 69. 71; Security, 6.

DIET MONEY.—See Debtor, 17.

DISMISSAL OF SUIT.—See Action, 159 *et seq.*; Practice, 217 *et seq.*

DISMISSAL OF APPEAL.—See Appeal, 39 *et seq.*

DISTRESS.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 2.

I. In the Supreme Courts.

1. A count framed in case for distress and detainer of chattels when no rent was due, was held to be bad on demurrer, as disclosing matter of trespass only, and not of an action upon the case. *Johuryloll* v. *Greeschunder Bose.* 19th Feb. 1846. Montriou, 131.

II. In the Courts of the Honourable Company.

2. A farmer on the part of Government was held to be competent to distrain crops on land alleged to be held rent-free, where the land in question was not entered in the Collector's register as rent-free, and was confessedly included in the *Potta* of a defaulting cultivator. *Birjlal Pundit* v. *Balgovind Juttee Theekadar and others.* 14th Sept. 1846. 1 Decis. N. W. P. 165.—Thompson, Cartwright, & Begbie.

3. Under the provisions of Cl. 10. & 11. of Sec. 30. of Reg. II. of 1819, a *Zamíndár*, having obtained a decree for the resumption of certain invalid *Lákhiráj* lands, cannot exercise his powers of distraint without first applying to have his decree carried into effect by the Courts of Judicature "in the manner in which the decrees of Courts are executed." *Joy Kishen Mookerjee and others* v. *Rajeb Lochun Singh and others.* 13th Dec. 1849. S. D. A. Decis. Beng. 455.—Barlow, Colvin, & Dunbar.

DIVORCE.—See Husband and Wife, 1.

DOCUMENTS.—See Evidence, 57 *et seq.*

DOWER.—See Husband and Wife, 3, 4, 5; Mortgage, 3.

DOWER.—Gift in Lieu of.—See Gift, 7, 8.

DUES AND DUTIES.

1. *Bullútidárs*, or village tradesmen, are entitled to their *Hakks* from every villager, according to the rules of the village communities, notwithstanding the villagers decline to employ their services, to which they are entitled. *Hunnappa Lohar* v. *Hunmunna Sepoy.* 29th Sept. 1840. Bellasis, 8.—Marriott, Giberne, & Greenhill.

2. Held, that dues levied as *Chandní* on *Hát* and *Chandní* lands were of the nature of rent of land upon which standing or temporary booths or shops were established, and not of the nature of *Sayer*, prohibited by Cl. 2. of Sec. 2. of Reg. XXVII. of 1793. *Mahmood Ahmed Chowdry and another* v. *Obye Churn Banerjee*. 19th Aug. 1846. S. D. A. Decis. Beng. 315.—Reid, Dick, & Jackson.

3. The right to fees for the performance of religious ceremonies can be made the subject of judicial inquiry between parties claiming to receive them; but according to the practice of the Courts, no persons can be required to pay those fees if it do not please them to do so. *Mt. Radha and others* v. *Mt. Asoo*. 30th Aug. 1847. 2 Decis. N.W.P. 304.—Tayler, Begbie, & Lushington.

4. Parties at the head of a sect of *Vaishnavas* sued to recover marriage-fees voluntarily paid to their alleged disciples, on the ground of local usage and custom; but as no proof of any usage of legal force was established the claim was dismissed. *Gourdass Byragee and another* v. *Annund Mohun Chuckerbutty and others*. 8th Nov. 1849. S. D. A. Decis. Beng. 428. — Barlow & Colvin. (Dick dissent.)[1]

5. A suit resting on an alleged right to be summoned at all marriages, and to receive a *Pánbatta*, or present of *Pán*, from the members of a particular community, is not one in which a decretal order can be enforced by our Courts. *Ram Guttree Biswas and others* v. *Mahadeo Bunnick and others*. 21st March 1850. S. D. A. Decis. Beng. 64.—Barlow & Colvin. (Dick dissent.)

[1] Mr. Dick dissented, on the ground that the claim of the plaintiff, and the denial of it, were based on inheritance, and not on any local usage, or custom, or voluntary. The Lower Courts had decided the right of inheritance to be plaintiff's; and as that was a matter of fact, and was not cognizable by the Sudder Dewanny Adawlut in special appeal, Mr. Dick would have affirmed the decisions of the Lower Courts as intangible.

DURPUTNÍDÁR. — See DARPATNÍDÁR 1, 2.

DWYÁMUSHYÁYANÁ. — See ADOPTION, 9.

EJECTMENT.

1. One *A*, believing his landlord's title defective, purchased the lands whereof he was tenant, before the expiration of his lease, from another party, in whom he alleged the real title to exist; taking the conveyance and bringing ejectment in the name of the lessor of the plaintiff. Judgment being subsequently signed by default, motion was made, on petition by the landlord, for leave to enter into the common rule to defend his title to the premises in question as landlord. Held, that in this form of action the Court will usually (even after execution) let in a party to take defence, unless gross laches be shewn. *Doe dem. Bissonath Day* v. *Hilder*. 15th Nov. 1847. Taylor, 189.

ELEPHANT.

1. The right to a captured elephant depends upon whose ground it was captured, and not who removed it from the pit and secured it, or in whose possession it subsequently remained. *Manavicrama* v. *Congana Veetil Moideen Cooty*. 28th Feb. 1850. S. A. Decis. Mad. 17.—Thompson.

EMBANKMENT.

1. In a suit, resting on an engagement to pay the expenses of several embankments; it was held, that the parties to the engagement only bound themselves to pay for so much of

the embankments as was situated in the *Talooks* in which they respectively held interests. *Pran Kishen Pal and others* v. *Radhamadhub Paramanick ond another.* 31st Jan. 1850. S. D. A. Decis. Beng. 16.—Barlow, Colvin, & Dunbar.

EMBEZZLEMENT.—See CRIMINAL LAW, 26 *et seq.*; SURETY, 4.

ENHANCEMENT OF RENT.—See ASSESSMENT, 27 *et seq.*

ENTRIES.—See EVIDENCE, 75 *et seq.*

EQUITABLE JURISDICTION.—See JURISDICTION, 11.

EQUITY OF REDEMPTION.—See MORTGAGE, 32 *et seq.*

ERRONEOUS HOMICIDE.—See CRIMINAL LAW, 160.

ESCAPE FROM CUSTODY.—See CRIMINAL LAW, 10. 115, 116.

ESCHEAT.

1. In a suit for possession of a house, the Moonsiff, disallowing the claims of both parties, declared the house to be intestate property, unclaimed by heirs, and that, consequently, it escheated to Government. The Moonsiff's decision was upheld by the Judge in appeal. Held, in special appeal, that the Moonsiff was not justified in originating a claim and adjudicating in favour of a third party (the Government), not before the Court. *Naraindoss and another* v. *Bhyro Dyal.* 10th Aug. 1846. 1 Decis. N. W. P. 192.—Thompson, Cartwright, & Begbie.

2. Where several parties were in Court claiming to succeed to a *Raj* by right of inheritance; it was held, that until the absence of all heirs under the Hindú Law should be declared, the intervention of the Government officers was premature. *Chowtreea Run Murdun Sein* v. *Sahib Perhlad Sein.* 26th May 1847. 7 S. D. A. Rep. 292.—Rattray, Tucker, & Barlow.

ESTATE.

I. ANCESTRAL.—See ANCESTRAL ESTATE, *passim.*
II. UNDIVIDED ESTATE.—See PARTITION, *passim*; UNDIVIDED HINDÚ FAMILY, 1, 2.
III. DESCENT OF ESTATE.—See INHERITANCE, *passim.*
IV. CONVEYANCE BY DEED.—See DEED, *passim.*
V. CONVEYANCE BY DEVISE.—See WILL, *passim.*
VI. PARTITION OF.—See PARTITION, *passim.*

EVIDENCE.

I. IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, 1.
II. IN THE SUPREME COURTS, 1*a*.
1. *Primâ facie Evidence*, 1*a*.
2. *Examination of Witnesses*, 2.
III. IN THE COURTS OF THE HONOURABLE COMPANY, 4.
1. *Generally*, 4.
2. *Admissions*, 16.
3. *Conclusive Evidence*, 23.
4. *Presumptions*, 30.
5. *Attendance of Witnesses*, 39.
6. *Examination of Witnesses*, 42.
7. *Documentary Evidence*, 57.
(*a*) *Judicial Documents*, 57.
(*b*) *Admission and proof of Deeds*, 66.

(c) *Accounts and Entries*, 75.
(d) *Other Documents*, 97.
(e) *Production of Documents*, 114.
(f) *Parol Evidence in proof of Writings*, 116.
8. *Secondary Evidence*, 119.
9. *Onus Probandi*, 128.
10. *Third party*, 139.
11. *Affirmation*, 140.
12. *In Appeal*, 142.
13. *Of Adoption.*—See ADOPTION, 10 *et seq.*
14. *Of Minority.*—See INFANT, 9.
15. *In Criminal Cases.* — See CRIMINAL LAW, 29 *et seq;* 117 *et seq.*
16. *Decision by Oath.* — See PRACTICE, 446 *et seq.*

I. IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

1. Where the point at issue is a question of fact only, there is a strong presumption in favour of the judgment of the Court below, as the Judges in India possess advantages in forming an opinion of the probability of the transaction, and, in some cases, of the credit due to the witnesses; but that does not relieve the Court of the last resort from the duty of examining the whole evidence, and forming its opinion upon the whole case. *Mudhoo Soodun Sundial* v. *Suroop Chunder Sirkar Chowdry.* 28th June 1849. 4 Moore Ind. App. 431.

II. IN THE SUPREME COURTS.

1. *Primâ facie Evidence.*

1a. A letter of demand addressed by a plaintiff to a defendant, being unanswered, is *primâ facie* evidence of the defendant's liability to pay. *Hornby and another* v. *Brijonauth Dhur.* 22d March 1849. 1 Taylor & Bell, 15.

2. *Examination of Witnesses.*

2. Under Act XXI. of 1839, a Justice of the Peace is not required to sign the depositions of witnesses at the moment they are taken down. When called on by writ of *Certiorari,* he may return a transcript of the proceedings duly signed; and even without his signature to the transcript the conviction would not, for that reason, be vitiated. *The Queen* v. *Tiloknauth Roy Chowdry.* 30th April 1849. 1 Taylor & Bell, 36.

3. Under Act V. of 1840, it would be more regular to insert in the written depositions that the witness deposed on oath or affirmation; and if on affirmation, to designate him therein as a Hindú or Mohammadan; but it is not necessary. *Ibid.*

III. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *Generally.*

4. An act proved in a Criminal Court being made the ground of a civil action, evidence offered in its disproof cannot be refused by the Civil Court. *Christian* v. *Parker.* 19th Nov. 1845. 7 S. D. A. Rep. 216.—Rattray.

5. Direct evidence is necessary in support of an alleged deficiency in the assets of lands let in farm. *Noor Jan Begum* v. *Lamb.* 19th May 1846. S. D. A. Decis. Beng. 194. —Tucker.

6. The amount of revenue payable on a share of an estate, as it appears in a purchaser's deed of purchase, may be good evidence against the vendor, but cannot be admitted to affect the interest of the other sharers. *Sheikh Mohummud Molaim and others* v. *Ram Gopal Surma Turufdar.* 27th Oct. 1846. S. D. A. Decis. Beng. 361.—Dick.

7. Verbal assertions by persons whose names were not recorded, who were not examined on oath or

solemn affirmation, and whose testimony was not reduced to writing, was held to be altogether worthless and inadmissible. *Poorye* v. *Mudaree and others.* 16th Feb. 1847. 2 Decis. N. W. P. 44.—Cartwright.

8. Evidence adduced to prove a claim must be *first* considered, and then conclusions for or against it may be drawn from collateral circumstances, but not *vice versâ*. *Sumbhoonath Beeshee* v. *Koonwur Indur Narain Raee and others.* 26th June 1847. S. D. A. Decis. Beng. 286.—Tucker.

9. The attestation of a bond by persons who can neither read nor write is not on that account to be rejected. *Gopee Sirdar* v. *Turiekoollah Sirdar.* 31st Aug. 1847. S. D. A. Decis. Beng. 488.—Tucker.

10. In a suit for rent-free lands, the decisions of the Lower Courts were reversed, as the reasons for not producing evidence before the Collector were not stated. *Umbikachurn Mookerjee* v. *Ram Ruttun Ghose and others.* 18th March 1848. S. D. A. Decis. Beng. 213.—Tucker, Barlow, & Hawkins.

11. A debt having been admitted, and payment in full not only promised, but ordered by a competent authority,[1] the Judge is not authorised in demanding other evidence of the debt than the proof of such acknowledgment and such promise to pay. *Fraser* v. *Pearee Soondree Dassee and others.* 8th April 1848. S. D. A. Decis. Beng. 308.—Tucker, Barlow, & Hawkins.

12. Proof, in a regular suit, of occupancy of the lands, rent of which has been sued for summarily, is not sufficient to establish the correctness of the summary award. *Neeloo Mulla* v. *Anund Chunder Nag and others.* 23d May 1848. 7 S. D. A. Rep. 507.—Hawkins.

13. The removal by the Court of Wards of a guardian appointed by such Court is evidence of the majority of the ward at the date of such removal. *Mehr-o-nissa* v. *Rajub-o-nissa.* 4th July 1848. S. D. A. Decis. Beng. 644.—Dick, Jackson, & Hawkins.

14. The Court is to record the points to be established respectively by the parties; and having done that, it is for the parties to produce the evidence in support or refutation of such points; but no party can be allowed to plead as an excuse for neglecting to file evidence, that the Court did not specifically call for it. *Colville and others* v. *Bennett and others.* 9th Jan. 1849. S. D. A. Decis. Beng. 13.—Hawkins.

15. The evidence of a single witness, having no special connection with the affairs of the plaintiff's family, and who described himself as a mere cultivator, ignorant of calculations of time, was held to be of no authority in proving the minority of the plaintiff in bar of the rule of limitation. *Gokool Chundur Raee and others* v. *Kallee Dass Raee and others.* 10th July 1849. S. D. A. Decis. Beng. 277.—Barlow, Colvin, & Dunbar.

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2. *Admissions.*

16. A verbal admission on oath by the respondent in a Criminal Court, that he and the appellant carried on business jointly, and on which the appellant grounded a claim in the Civil Courts for a share of lands in possession of the respondent, was declared to be insufficient to found such claim, being unsupported, and contrary to the documentary evidence and the oral testimony adduced by the respondent.[2] *Guneshnath Dutt* v. *Ram Lochun Dutt and others.* 14th April 1847. S. D. A. Decis. Beng. 107.—Dick.

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[1] See Reg. X. of 1793. sec. 19.

[2] In this case the Court observed, that had the respondent himself advanced a claim contrary to his own recorded declaration on oath, the case would have been very different.

17. Where a party sued certain persons for cutting and carrying away the whole crop on certain lands cultivated by them under a *Bhaolí* tenure (according to which the *Zamíndár* and the tenant divide the crop), and the cultivators replied that the plaintiff had not supplied them with seed at the proper time, and that when he did give it the seed was old and bad, such reply was held to be a clear admission of the *Bhaolí* tenure. *Surbjeet Singh* v. *Kanta Chung Chowkeedar and others.* 31st May 1847. S. D. A. Decis. Beng. 184.—Tucker.

18. Admission by one defendant is no valid reason for exonerating co-defendants from a claim established against them by evidence. *Tarachand Desmookho* v. *Rumonee Dassee and others.* 14th June 1847. 7 S. D. A. Rep. 339.—Tucker.

19. Where the plaintiffs sued in one and the same action for possession of certain *Chur* lands and for balances of rent; it was held, under the circumstances of the case, and taking the plaint by itself, that the suit should be dismissed; but as the defendant in his answer declared that he was willing to pay at a certain rate, and admitted a certain sum as due to the plaintiffs for rent, such sum was decreed to the plaintiffs. *Broderick* v. *Hurmohun Raee.* 11th Sept. 1847. S. D. A. Decis. Beng. 536.—Tucker, Barlow, & Hawkins.

20. An admission by a party in a *Rází námeh* filed in a suit is good evidence to refute a plea advanced by him in another suit. *Vencapa Hegady* v. *Ganapaya.* 15th Nov. 1849. S. A. Decis. Mad. 111.—Hooper & Thompson.

21. The fact of the plaintiff being present when certain bills of sale were executed by his father, and in no way objecting to the sale, was held to be sufficient evidence of his being a consenting party to such sale; and his claim to the property sold, by right of inheritance, was disallowed.[1] *Baboo Narrainapah* v. *Sheik Lootfoollah.* 13th Dec. 1849. S. A Decis. Mad. 128.—Thompson & Morehead.

21*a*. It is sufficient *primâ facie* evidence that a sale is *bonâ fide*, and not fictitious, if the vendor admits the sale, though alleging it to be fictitious and fraudulent, and the purchaser produces a deed duly registered; and it is not necessary to require the purchaser to file proof of payment. *Mohun Singh* v. *Kunhya Lal Jah and others.* 29th April 1850. S. D. A. Decis. Beng. 159.—Dick.

22. Admissions on the point of a *general proprietary* possession are no bar to a plea denying that the party had any share in the *management* of an estate. *Beejye Gobind Bural* v. *Kallee Dhass Dhur and others.* 10th June 1850. S. D. A. Decis. Beng. 279.—Barlow, Jackson, & Colvin.

3. *Conclusive Evidence.*

23. The statement in a deed of compromise, that the consideration money was paid, is not of itself, according to the practice of the Honourable Company's Courts, conclusive evidence of such payment, and may be rebutted by evidence of non-payment. *Chowdry Deby Persad and another* v. *Chowdry Dowlut Sing.* 13th Dec. 1844. 3 Moore Ind. App. 347.

24. Where payment is denied, and evidence of non-payment produced,

[1] The property in question was the dower of the plaintiff's mother, which had been made over to her by a deed of gift by his father, who afterwards sold it to a third party. There is no doubt but that the deed of gift would, under ordinary circumstances, have acted as a complete bar to the subsequent sale, and that the plaintiff would have been entitled to three-fourths of the property as his mother's heir, one-fourth being deducted as the legal share of the father, according to the provisions of the Muhammadan law of inheritance.

the *onus probandi* that the money was paid lies on the debtor. *Ibid.*

25. *Dictum.* The fraudulent alienation of property, in order to evade the satisfaction of decrees is so common, that when the wife of a Muhammadan sets up a claim to property, which apparently belongs to her husband, nothing short of full and satisfactory proof in support of the claim ought to induce a Court to uphold that claim. *Ushrufoonnissa Beebee* v. *Sudderooddeen Biswas.* 9th May 1845. S. D. A. Decis. Beng. 152.—Gordon.

26. The title of a party, as purchaser at a revenue sale, declared in a previous suit, is conclusive evidence of his right as purchaser in subsequent actions between the same parties. *Sheik Fuzl Hosein* v. *Meer Niamut Ali and others.* 18th Sept. 1847. 7 S. D. A. Rep. 393.—Tucker, Barlow, & Hawkins.

27. The evidence of a *Patwárí* is not sufficient *alone* to justify the reversal of a decision in appeal founded on other evidence. *Jurbundun Misser* v. *Mudud Ali.* 19th Jan. 1848. 3 Decis. N. W. P. 22.—Tayler.

28. A boundary marked off between two villages, in a suit contesting the boundaries of one of them and a third village, was held not to be conclusive evidence in a subsequent suit as to the boundaries of those two villages. *Rooderpurshad Mookerjee and others* v. *Parushnath Singh Chowdhree and others.* 11th March 1848. S. D. A. Decis. Beng. 184.—Tucker, Barlow, & Hawkins.

29. The mere execution and registration of a mortgage bond, setting forth payment of the mortgage money, are not in themselves conclusive evidence of actual payment. *Shamachurn Dey* v. *Rughoonath Pershaud Dey.* 23d Sept. 1850. S. D. A. Decis. Beng. 510.—Jackson & Colvin.

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4. *Presumptions.*

30. It was alleged that *A* gave a deed of agreement, at the time of obtaining a lease, binding himself to give sufficient security for the fulfilment of the conditions of the lease within three months, and that he failed to do so. *B* afterwards purchased the property, and sued to cancel the lease. It appeared that unreserved possession was given before the fulfilment of the deed, and that the deed was written four days after the lease, and not registered till one day after the sale, and two months and more after the period for giving security had expired. Held, that this was strong presumptive evidence of the deed having been fabricated after the sale of the property had been made and determined upon, and it was accordingly pronounced to be unworthy of credit. *Ram Tunoo Sha* v. *Roe.* 4th Feb. 1846. S. D. A. Decis. Beng. 33.—Reid, Dick, & Jackson.

31. A woman leaving her husband and going to reside with her friends, and he not sending for her back, does not constitute sufficient proof that he has turned her out for bad conduct. *Mt. Sohodrah* v. *Nunkoo Lall.* 6th June 1846. 1 Decis. N. W. P. 25.—Thompson.

32. In a suit for the redemption of a mortgage, the plaintiff claiming under a deed of gift from the mortgagor, the non-production of such deed in previous suits affecting the same land, when its production would have been of paramount importance, was held to throw doubt and suspicion upon the authenticity of the instrument. *Dewan Ramnath Singh* v. *Mt. Moeenul Fatima.* 8th Feb. 1847. S. D. A. Decis. Beng. 46.—Rattray, Dick, & Jackson.

33. Evidence cannot be impeached by conclusions drawn merely from a general practice. *Junnomjoy Banoorjea* v. *Sonna Munnee Dassee and others.* 26th June 1847. 7 S. D. A. Rep. 349.—Hawkins.

34. Where an attachment has issued by order of the Court, and subsequently a declaration of for-

feiture made by the Governor-General in Council, it must be presumed that all things previous to the attachment were regularly and legally done. *Mt. Ghoolab Koonwur and others* v. *The Collector of Benares.* 17th Dec. 1847. MS. Notes of P. C. Cases.

35. In a claim for balance of rent, brought forward three years after the expiration of a lease, the delay was held to be presumptive evidence that the plaintiff had consented to an annual deduction of rent, proved to have been made on account of defective possession. *Hill and others* v. *Jychundur Pal.* 20th April 1848. S. D. A. Decis. Beng. 350.—Jackson & Hawkins.

36. Presumptions were raised against an *Anumatí Patra* affecting a large property, as it had not been executed before members of the family of the alleged writer, or author of it, or before independent witnesses. *Rajcoomaree Dossee* v. *Sreemutee Bamasoonduree and others.* 30th April 1849. S. D. A. Decis. Beng. 129. —Colvin.

37. An admitted union of interests in certain properties, was taken to be presumptive proof of the invalidity of a claim to the exclusive possession of certain others. *Bhyrub Chunder Mujmoodar and others* v. *Nubeen Chundur Mujmoodar and another.* 30th June 1849. S. D. A. Decis. Beng. 213.—Dick, Barlow, & Colvin.

38. In a suit for mesne profits of lands, purchased by the plaintiff from the defendant, the defendant pleaded, in bar to the action, a deed of agreement, containing a condition, that the plaintiff (pending a suit then lately brought by the defendant for recovery of the lands in question, and until his name was entered in the Collector's books) should have no claim to the profits. The Zillah and Sudder Courts in India discredited the oral testimony, and declared the deed to be a forgery. Upon appeal, these decrees were reversed; the Judicial Committee of the Privy Council, upon the evidence and probabilities of the case, being of opinion that the circumstance of the vendor not being in possession of the lands at the time of the purchase, and that a suit was pending at the time to recover possession, and taking into consideration the length of time that had elapsed before the plaintiff made his demand, were, coupled with the evidence produced, sufficiently strong facts in favour of the deed of agreement. *Mudhoo Soodun Sundial* v. *Suroop Chunder Sirkar Chowdry.* 28th June 1849. 4 Moore Ind. App. 431.

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5. *Attendance of Witnesses.*

39. A Judge cannot, by his own motion, summon witnesses other than those named by the parties to the suit. *Sheikh Boodhun* v. *Sheikh Joomun and others.* 12th June 1847. 2 Decis. N. W. P. 175.—Begbie.

40. Paupers who are unable to pay the expense of summoning witnesses are entitled to have them summoned *gratis* by the paid *Chuprásís* of the Court. *Doorga Munnee* v. *Ram Chundur Raee and others.* 6th Nov. 1849. S. D. A. Decis. Beng. 423.—Jackson.

41. The oath of the agent of a *Pardah Nishín* was held to be sufficient to prove the materiality of the evidence of a recusant witness, and to authorise his seizure and production in Court by the *Názir*, under the provisions of Sec. 6. of Reg. IV. of 1793. *Rao Ramshunker Raee and others* v. *Mt. Dromdhee and another.* 7th Nov. 1849. S. D. A. Decis. Beng. 427.—Jackson.

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6. *Examination of Witnesses.*

42. There is no legal reason why the managing agent of one of the parties to a civil suit should not be summoned and examined as a witness on the motion of the opposite

party.[1] *Soonamonee Dossee, Petitioner.* 22d Sept. 1836. 1 S. D. A. Sum. Cases, Pt. i. 12.—D. C. Smyth & Barwell.

43. A party to an action cannot be called upon to produce the witnesses named by the opposite side.[2] *Bhobun Mye Debeea Chowdryn, Petitioner.* 22d Sept. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 71.—Reid.

44. Where the defendant cited, amongst others, two witnesses, the one a Moonsiff, and the other a *Názir* of the Collector's, the Sudder Ameen, instead of summoning these two persons, and taking their evidence on solemn affirmation, satisfied himself with calling on them for a report, on the strength of which he dismissed the plaintiff's claim, and his decision was affirmed by the first assistant to the Commissioner. Held, that such conduct was contrary to the usage which prevails in every Court, and that the report was altogether inadmissible as evidence, and the case was remanded accordingly. *Purdeh Dibbya* v. *Maddub Ram Rajkhwa.* 7th April 1846. S. D. A. Decis. Beng. 148.—Tucker.

44*a*. The citation and examination of an European witness in the Mofussil Courts must be in the English language.[3] *Abbott, Petitioner.* 16th Sept. 1846. 2 Sev. Cases, 365.—Reid.

44*b*. The evidence of a defendant should be called for and received by the Moonsiff, though he should not appear to defend till after the examination of the plaintiff's witnesses. *Ram Chund Sircar* v. *Rampershad Mytee.* 18th Jan. 1847. S. D. A. Decis. Beng. 17.—Tucker.

44*c*. It is irregular to decide a case solely on evidence recorded in another suit, when other evidence was at command.[4] *Mt. Gowra Kowur* v. *Cheonee Lal.* 13th May 1847. S. D. A. Decis. Beng. 150.—Rattray. *Chund Khan* v. *Belukkhuna Bibi.* 8th April 1850. S. D. A. Decis. Beng. 105.—Jackson, Colvin, & Dunbar.

45. One of the witnesses to a deed being living, he should be called and examined, though the Court may have before it copies of the depositions of deceased witnesses taken in a summary proceeding relating to the same property. *Sutputtee Dassee and others* v. *Ramnurain Mookerjee and others.* 6th March 1848. S. D. A. Decis. Beng. 136.—Hawkins.

46. The evidence of an illiterate and ignorant man in regard to the age of another is no ground for rejecting his evidence to the attestation of a fact which he declares he witnessed. *Shibchundur Surmah and others* v. *Batool Dhur and others.* 6th March 1848. S. D. A. Decis. Beng. 135.—Hawkins.

47. The evidence of a debtor, examined as a witness in his brother's suit to a denial of his own debt, was held to be inadmissible. *Madhub Shah* v. *Jhuboo Shah and others.* 19th July 1848. S. D. A. Decis. Beng. 693.—Hawkins.

48. Persons who cannot read and write may be attesting witnesses to a legal instrument. *Gopee Sirdar* v. *Turiekoollah Sirdar.* 31st Aug. 1847. S. D. A. Decis. Beng. 488. —Tucker.

49. But no great value will be attached to their evidence. *Bississer Sookool* v. *Radhanath Lahoree.* 27th March 1849. S. D. A. Decis. Beng. 77.—Dick, Barlow, & Jackson.

50. A Judge, having called for further proof, and the plaintiff hav-

[1] The agent in the above case was not a *Mukhtár* employed in the Courts, but an agent for the management of the property of his principal.

[2] In this case the witnesses were the servants of the person ordered by the Lower Court to produce them.

[3] See Construction No. 1035.

[4] This point has been repeatedly decided.

ing put in a list of further witnesses, cannot decide the case without examining such further witnesses. *Dwarkanath Bose* v. *Bhyrub Chundur Dutt and others.* 3d April 1850. S. D. A. Decis. Beng. 90. —Barlow & Colvin.

51. When a party has given in a list of witnesses the cause must not be decided without hearing their testimony. *Nooroollah Chowdhree* v. *Sheikh Bisharut Ali.* 20th April 1850. S. D. A. Decis. Beng. 136. —Barlow.

52. Where the Court of first instance has decided a case on the evidence of witnesses, and given the reasons for so doing, the Lower Appellate Court cannot dispose of the case in appeal on the ground that such witnesses, in another suit between the same parties, were directly discredited. *Boodha* v. *Net Singh and others.* 23d May 1850. 5 Decis. N. W. P. 84.—Brown.

53. The examination, by commission, before a Court, of an absent witness within the local limits of the jurisdiction of the Supreme Court, must, under Sec. 6. of Act VII. of 1841, be before a Court of Requests.[1] *Chand Khan* v. *Puncharam Bagdee and others.* 4th June 1850. S. D. A. Decis. Beng. 251.—Dick & Dunbar.

54. A commission for the examination of witnesses resident in a foreign territory, under Sec. 7. of Act VII. of 1841, can only issue in respect of persons who may, at the time being, be *in the service of the East-India Company.* *Juggernath and another* v. *Bholanath.* 5th Aug. 1850. 5 Decis. N. W. P. 211.—Begbie, Deane, & Brown.

56. Depositions taken by a Collector and *Pêshkâr*, in conformity with the Judge's requisition, do not constitute legal evidence whereon to found a decretal order. *Bhugwan Dass* v. *Boodha.* 21st Sept. 1850. 5 Decis. N. W. P. 338.—Begbie & Lushington.

[1] Now the Court of Small Causes. See Act IX. 1850, s. 6.

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7. *Documentary Evidence.*

(*a*) *Judicial Documents.*

57. It was held to be highly irregular for the Court below to send for records of cases, judicial or revenue, in proof of allegatons before the Court, instead of leaving it to the parties to adduce their own proofs.[2] *Anoopnauth Missur and another* v. *Dulmeer Khan and another.* 31st Aug. 1846. 1 Decis. N. W. P. 135. —Thompson, Cartwright, & Begbie. *Hafiz Mahmood Khan and others* v. *Moonshee Shib Lall and others.* 7th Dec. 1846. 1 Decis. N. W. P. 239.—Tayler, Thompson, & Cartwright. *Sheodial Rae and others* v. *Bukht Rae and others.* 15th Dec. 1846. 1 Decis. N. W. P. 249. —Tayler, Thompson, & Cartwright. *Chotee Singh* v. *Pershaud Singh.* 8th Jan. 1847. 2 Decis. N. W. P. 1.—Thompson. *Rajah Nowul Kishore* v. *Syud Enayut Alee.* 22 March 1847. 2 Decis. N. W. P. 63.—Tayler, Thompson, & Cartwright. *Deendyal* v. *Syed Hoossein Ali and others.* 31st July 1848. 3 Decis. N. W. P. 258.—Thompson & Cartwright. (Tayler dissent.) *Futteh Narain Singh and others* v. *Bhoabul Singh and others.* 6th March 1849. 4 Decis. N. W. P. 44.—Thompson.[3]

[2] See Sec. 10. of Reg. XXVI. of 1814, and Circular Orders No. 127 of the 4th Jan. 1841, and No. 703 of the 16th May 1848.

[3] I have placed these cases together, as they all bear upon the point of the power of the Court to call for documentary evidence not adduced by the parties to a suit, though slight differences exist as to their circumstances. In the first four cases the Lower Court had called for evidence recorded in suits previously dismissed; in the fifth and sixth cases the Principal Sudder Ameen had sent, at the request of the plaintiff, for records from the Collector's Office; and in the sixth, likewise for the whole of certain proceedings that were

58. The record of another case may be referred to as evidence; but when such reference is made, the Court should cause copies of the necessary papers and evidence to be recorded with the case under investigation. *Ram Buksh Rae* v. *Sheo Ram Rae and others.* 9th June 1847. 7 S. D. A. Rep. 312.—Dick, Jackson, & Hawkins.

59. But, if such copies be not recorded, the omission does not necessarily invalidate the judgment. *Ibid.*

60. Evidence *vivâ voce* being obtainable, it was held irregular to decide the claim upon proceedings recorded in another suit. *Bhuggo Saharia* v. *Bholakooch Sezawul.* 12th June 1847. S. D. A. Decis. Beng. 247.—Hawkins.

61. In a claim founded on deeds

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held in the execution of decree department. In the last case the Principal Sudder Ameen required from the Judge's and Collector's Office a mass of proceedings and papers which, to use the words of the deciding Judge, might "fairly be termed a chaotic heap." The decision was given with reference to that passed in the sixth case. The majority of the Court, in giving judgment in the sixth case, observed that they were further of opinion that the practice of sending for revenue or judicial proceedings, excepting such as are specially allowed by the Regulations, such as Sec. 31. of Reg. VII. of 1822, was tantamount to allowing an evasion of the Stamp Law, and quoted Sec. 17. of Reg. X. of 1829, and Sec. 18. and Sched. B. of the same Regulation. They concluded by stating, that, in their opinion, the practice was not only unsanctioned by law, but that it was opposed to every rule of practice which that law lays down, and productive of nothing but inconvenience and uncertainty from first to last. Mr. Tayler recorded his dissent in this case at considerable length, and stated, amongst other things, that the practice of the Court when he joined it was invariably to send for records or proceedings on good cause being shewn; that the same practice existed in the Calcutta Court; and that the principle was recognised in Constructions No. 693, & 1259. He further observed, that the practice had been denounced by recent decisions, and referred to the cases *Hafiz Mohumed Khan, Chota Singh,* and *Rajah Nowul Kishore,* abovementioned, as having attracted the notice of Mr. Ledlie, the Principal Sudder Ameen at Bareilly, who addressed the Court on the subject, and requested to know whether, with reference to those decisions, he was competent, on the motion of the party disputing an exhibit, to send for the particular paper, or the entire record, if necessary, in order to ascertain whether the document had been clandestinely foisted into the file, or the record falsified, as represented. He was informed, in reply, that he had full power, and he was referred to Constructions Nos. 693 & 1259, which, it was observed by the Court, *expressly* recognise the competency of the Court "to call for the records of a public office with a view to a just decision between the parties in suits pending before them." In regard to the case of *Rajah Nowul Kishore,* it was observed, "that it cannot be supposed that the Court, in passing the decision, overlooked the Construction 1259, or that they intended by implication to repudiate an authoritative rescript: the only allowable presumption is, that the Principal Sudder Ameen irregularly insisted on sending for papers, of which the parties might have obtained copies without much expense, when the circumstances of the case were not so 'peculiar' as to justify the act." Mr. Tayler proceeded to remark that he did not intend, by the decision in *Rajah Nowul Kishore's* case, to discountenance the practice of calling for records, but to condemn an indiscriminate and injudicious call for them; and added extracts from a letter of the Calcutta Court in answer to a reference made to them on this point. These extracts I subjoin, as they clearly lay down the practice of the Calcutta Court:—"Par. 3d. Viewing the question generally, the Court observe, that although ordinarily the Courts are not to seek for evidence, but to decide on what the parties choose to place before them, they are not precluded from calling for whatever evidence they may consider necessary for the elucidation of a case. The expression in Cl. 3. Sec. 10. Reg. XXVI. 1814, 'evidence may be adduced by either party,' is not considered to restrict the exercise of the Court's discretion in that respect. Par. 4th. The practice of this Court is in conformity with these views. As an instance, may be mentioned the case of *Sumeshur Pandee and others* v. *Rajah Gopal Surn Singh,* decided on the 24th Sept. 1845 (p. 306 of printed decisions), when the Court, through their Register, called upon Government for certain records which the Judges considered would throw light on the question before them." And see the Placita 44*c*. 45. 58 *et seq.*

in the hands of the Collector, who refused to give them up to the plaintiff, the Lower Courts refused to try the case, on the ground that the precedents of the Court required them to try suits as brought before them by the parties. Held, that such refusal was irregular, as the enunciation of this general principle, however correct in the abstract, and however mischievous if carried too far, has never been held to prohibit the Civil Courts from sending for any *Misl* whenever they desired to inspect it. *Hurpershad Ram and others* v. *Bisesshur Pershad and others.* 2d Aug. 1847. 2 Decis. N. W. P. 227. —Lushington.

62. It was held, that the inspection by a Principal Sudder Ameen of the record of a case formerly decided by himself was regular. *Bichookram* v. *Baboo Benee Pershad and others.* 10th July 1849. 4 Decis. N. W. P. 226. — Lushington.[1]

63. It is irregular to decide upon evidence given in a case in the Magistrate's Court, when the *vivâ voce* testimony of the persons who gave such evidence is procurable. *Mitrjeet Lal and others* v. *Baboo Soondur Sahee.* 23d Sept. 1847. 7 S. D. A. Rep. 398.—Tucker.

64. *Dictum.* The judgment of a Court of concurrent jurisdiction directly upon the point, is, as a plea, a bar, or, as evidence, conclusive between the same parties, upon the same matter directly in question in another Court. But it is not evidence of any matter which came collaterally in question; nor of any matter incidentally cognizable; nor of any matter to be inferred by argument from the judgment. *Mt. Ommutozuhra Begum* v. *Lootfoollah Khan.* 30th Sept. 1847. 7 S. D. A. Rep. 399.—Hawkins.

65. Decisions passed upon trial by the judicial tribunals of the native states in the presence of both the parties before the Company's Courts may be received as proof *quantum valeat. Mt. Ranee* v. *Koonwur Gokul Chund.* 28th July 1849. 4 Decis. N. W. P. 245.—Lushington.

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[1] Mr. Lushington observed—"In regard to the regularity of the Principal Sudder Ameen's inspecting the record of the case formerly decided by himself, I refer to the case of *Deen Dyal* v. *Syed Hoossein Ali*, decided by the Sudder Dewanny Adawlut on the 31st July 1848. On that occasion a difference of opinion existed between the Judges; but the authorities quoted and arguments employed by Mr. Tayler thoroughly establish the legality of the practice. In the course of my judicial experience I have never heard the right of a Judge to inspect records called in question, nor do I see that the exercise of that privilege in particular cases is hostile to the acknowledged maxim, that the litigant parties must conduct their suits in any way they think proper." It seems, therefore, that Mr. Lushington decided this case by reference, as to a *precedent*, to the opinion of a dissentient Judge, when the majority of the Court decided the directly contrary way.

(*b*) *Admission and Proof of Deeds.*

66. Deeds lost, or otherwise not forthcoming, are allowed to be proved by evidence. *Gooroopershad Gohu and others* v. *Greeschunder Bukshee and others.* 25th Jan. 1847. S. D. A. Decis. Beng. 24.—Tucker.

67. The mere filing in Court of a deed of conditional sale is not of itself a sufficient proof of the transaction being genuine. *Seetul Purshad* v. *Gujraj Singh and another.* 27th Jan. 1848. S. D. A. Decis. Beng. 36.—Hawkins.

68. A *Kabúliyat* and a security bond being on the same paper, and not duly stamped, are inadmissible. *Radha Mohun Gosain and others* v. *Putitpabun Banerjea and others.* 22d Feb. 1848. S. D. A. Decis. Beng. 106.—Hawkins.

69. When the attesting witnesses to a document are dead, the holder of the document is not debarred from proving it by other means, such as, the production of the writer of it, and

of persons who were present at the time of its execution. *Ranee Chooramunnee and others* v. *Sonatun Manjee.* 19th June 1848. S. D. A. Beng. 554.—Tucker.

70. The admission of an *Anumati Patra* affecting a large property, on the evidence of a few persons, in opposition to the opinion of the Judge who had had the witnesses before him, and notwithstanding the proof of an earlier authentic will, as shewn by a decree of the Supreme Court, was held to be impossible. *Rajcoomar Dossee* v. *Sreemuttee Bamasoonduree and others.* 30th April 1849. S. D. A. Decis. Beng. 129. —Colvin.

71. A deed, exhibiting suspicious erasures, coupled with the testimony of the witnesses to it being highly improbable, was rejected. *Gooman Raee* v. *Nurkoo Raoot.* 20th June 1849. S. D. A. Decis. Beng. 240. —Dick, Barlow, & Colvin.

72. Though a deed may appear to the presiding Judge as *primâ facie* suspicious, he cannot dispense with the testimony of its subscribing witnesses. *Mt. Adim-o-nissa Bibi and others* v. *Mt. Aymun Bibi and another.* 25th July 1849. S. D. A. Decis. Beng. 303.—Jackson.

73. A deed is not to be rejected in evidence as unstamped, if it be written at a time when no stamp law was in force. *Muharajah Sumbhoonath Singh* v. *Bukshee Domun Lal.* 3d Jan. 1850. S. D. A. Decis. Beng. 2.—Barlow, Colvin, & Dunbar.

74. It is not sufficient that a deed, which diverts real property from the channel in which it would naturally flow, should be executed and locked up in a box. There are means of giving unquestionable validity to documents of this nature, unexpensive and easy of access; and if the parties interested refuse to use them, they cannot be surprised if the documents are rejected by the Civil Courts. *Mt. Zynub Begum and others* v. *Begma Beebee.* 19th Sept. 1850. 5 Decis. N. W. P. 333.—Lushington.

(*c*) *Accounts and Entries.*

75. In the absence of invalidating evidence, well-kept books of accounts are good proof of the existence of a debt. *Hurgovind Kudwasa* v. *Mohtdeen Koolee Khan.* 23d Nov. 1843. Bellasis, 48.—Bell, Simson, & Hutt.

76. Where the plaintiffs did not produce a *Hát Chittah,* under which they claimed, because it was not producible, being on plain paper; it was held, that they should be allowed to prove their claim by other satisfactory evidence.[1] *Kumul Dutt and another* v. *Sheperdson.* 4th Feb. 1847. S. D. A. Decis. Beng. 39. —Reid.

77. In a suit for the recovery of a loan on usufructuary mortgage, an account produced by the mortgagor was rejected, because not mentioned in his answer, nor supported by vouchers of payments. *Surdha Narain Raee* v. *Sohun Lall and another.* 8th Feb. 1847. S. D. A. Decis. Beng. 45.—Rattray, Dick, & Jackson.

78. In a suit for the recovery of arrears of rent, a private register of receipts granted by a *Zamíndár,* engrossed on plain paper, was directed to be taken *quantum valeat;* no Regulation requiring a private memorandum kept by an individual to be written on stamped paper. *Ramgopal Mookerjea* v. *Rodgers and others.* 20th March 1847. S. D. A. Decis. Beng. 83.—Tucker.

79. According to the custom of the Mirzapor Bázár, when a person has indigo to sell, or contracts to supply any quantity, he gives a *Dallál* a *Satá,* in which the terms on which the person will sell or supply the seed are entered; the *Dallál* takes this into the market, and, meeting a purchaser ready to agree to the terms, he requires him to affix his signature to the *Satá,* which is then returned to the seller; the purchaser retaining a copy thereof and

[1] See Construction No. 292.

entering the transaction in his books. In a case founded on such a transaction, the decision was postponed, in order to enable the plaintiff to have the memoranda in his books, and which were exact copies of the *Satás*, said to be in the hands of the defendant properly stamped.[1] *Bindrabund* v. *Menzies*. 25th May 1847. 2 Decis. N. W. P. 261.

80. Held, in a case founded on a similar transaction, that such an entry in the books of the purchaser constitutes a "minute or memorandum of an agreement" provided for by Rule 1. of Schedule A. of Reg. X. of 1829; and by Rule 20 of the same Schedule, a copy of that memorandum, when "given in evidence for the recovery of money secured thereby," should bear the same stamp as that prescribed for the original deed. *Hurree Doss and another* v. *Hudson*. 8th June 1847. 2 Decis. N. W. P. 165.—Lushington.

81. A copy of the *Satá* in such a transaction should bear the stamp prescribed for bonds of the same amount. *Ibid.*[2]

82. Where the *Satás* were copied in the plaintiff's books, and stamped copies of extracts from those books were produced to support the testimony of the witnesses to the transaction; it was held, that such copies were admissible in evidence, as the original *Satás*, being with the defendant, and he having failed to produce them, the Court were obliged to have recourse to secondary evidence. *Bindrabund* v. *Menzies*. 17th Aug. 1847. 2 Decis. N. W. P. 261—Tayler & Lushington. (Begbie dissent.)

83. Under Constructions No. 380 and No. 574, the production of a *Kabúliyat* is not indispensable in proof of a right to demand rents, if it appears by the production of the *Jama Wásil Báki* papers and accounts that arrears are due. *Gholam Mohummud Shah* v. *Bunjooree Cheragee*. 7th Aug. 1847. S. D. A. Decis. Beng. 403.—Tucker, Barlaw, & Hawkins.

84. A claim by bankers for balance of a cash account will be considered to be established by the banker's books, if their authenticity be deposed to by the *Gumástahs* of the firm.[3] *Birjlal Opadhia* v. *Maharajah Het Nurain Singh*. 21st Sept. 1847. S. D. A. Decis. Beng. 563.—Rattray.

85. Books of account of a mercantile firm, though not signed or attested, must be received as evidence *quantum valeat*. *Birjomohun Chowdhree* v. *Chunder Munnee Shah and others*. 6th Jan. 1848. 7 S. D. A. Rep. 423.—Hawkins.

86. *Khattas*, to be evidence of a

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[1] The Court remarked, on the case coming on to be heard a second time—"In a former case the Judge had overruled an objection taken by the Principal Sudder Ameen to the filing of a *Satá* on unstamped paper. This rule was, in the opinion of the Court, erroneous; but it was calculated to mislead the parties in the present suit. The Court therefore adopted the more indulgent of the modes of proceeding placed at their option, and returned the documents to the plaintiff, that he might get them properly stamped."—(Tayler & Lushington). Mr. Begbie differed from his colleagues, and thought that the permission given to the plaintiffs to get the duplicate copies of the *Satás* filed by him, stamped, was not justified by the Circular Order No. 179 of the 31st Jan. 1842, which permits such indulgence to *plaintiffs* on *special* grounds only; and he did not consider that there was any thing in the present case which called for such an exercise of the Court's power.

[2] In this case the decisions of the Lower Courts were set aside, and the case returned to the Principal Sudder Ameen, with directions to proceed as directed in the 7th paragraph of the Circular Order No. 179, of the 31st Jan. 1842; that is, to exercise its discretion in regard to granting, or not granting, the party who presented a deed unstamped, or improperly stamped, an opportunity of remedying the defect in it.

[3] And see the cases of *Ulruk Singh* v. *Brijpal Das*. 3 S. D. A. Rep. 417; and *Sham Das* v. *Devi Dayal*. 5 S. D. A. Rep. 154.

[4] But see the case of *Sorabjee Vacha Ganda* v. *Koonwurjee Manikjee*. 1 Moore Ind. App. 47.

debt, must be verified by some one. *Ramsuhye Bhuggut and others* v. *Aodan Bhuggut.* 16th Feb. 1848. S. D. A. Decis. Beng. 83.—Tucker.

86 *a.* Bonds or other obligations for the payment of money entered in a merchant's *Bahí Khatta*, cannot be received as such in evidence in a civil suit, unless the paper upon which they were written bear the stamp prescribed by Reg. X. of 1829. *Gaurmohan Roy* v. *Sumbhoochandra Roy.* 13th Aug. 1842. 2 Sev. Cases, 361.—Barlow.

87. The Circular Order No. 17, of the 31st Aug. 1838, is explanatory of the Circular No. 7, dated the 7th May previously, and of the Construction No. 325, laid down by the Court on the 18th Aug. 1820, both of which require, that when obligations for money debts are formally entered in merchants' and bankers' books, and are regularly signed and attested, and the books are filed on the record as proof of claims, such books cannot be received as evidence in the absence of a proper stamp, as prescribed in Schedule A. of Reg. X. of 1829; and where *Khatta* books were duly signed at the foot of an account, the total of which was summed up and attested by witnesses, the books were declared not to be admissible under the first-mentioned Circular Order. *Parbuttee Sunkur Mujmoodar and another* v. *Shib Soondree Dassee and another.* 25th March 1848. S. D. A. Decis. Beng. 231.—Tucker, Barlow, & Hawkins.

88. Two books of account, although not attested by witnesses, were held to be admissible as evidence of a claim for a balance on adjustment of accounts; and it was held, that they could not be rejected because they were only two in number. *Joalah Pershad* v. *Mohumed Saadut Ali and others.* 1st May 1848. 3 Decis. N. W. P. 130.—Thompson & Cartwright. (Tayler dissent.)[1]

89. But it does not follow, because there are *two* books of account, that those two books are in conformity with *Mahájani* custom, and trustworthy. *Toolseeram and another* v. *Rajah Khooshall Singh and another.* 24th Dec. 1848. 4 Decis. N. W. P. 337.—Robinson.

90. An account entered in the *Bahí Khatta* of a *Mahájan*, which has been rendered, and the correctness acknowledged by the constituent, will receive proof from the entry in the *Bahí Khatta. Ibid.*

91. But a *Bahí Khatta* of itself is no proof of a debt which has never been acknowledged. *Ibid.*

92. An injunction issued by the Lower Court for the production of the plaintiff's account-books, at the instigation of the defendant, was held to be irregular and unwarrantable. *Soleman Shekoh Gardner* v. *Munnoo Lall.* 31st May 1848. 3 Decis. N. W. P. 182.—Thompson.

93. The production of an entry in the Quinquennial Register of a Collectorate, which entry was compared and certified by the Judge as exact, was held not to be of itself sufficient evidence to prove that a village entered in the Register in 1795 as a *Neej Talook*, actually was a *Neej Talook. Kashee Chundur Raee and others* v. *Noor Chundra Dibeea Chowdrain and another.* 18th April 1849. S. D. A. Decis. Beng. 113. —Barlow & Colvin. (Dick dissent.)

94. In a suit for the recovery of the price of certain lace, &c. furnished by the plaintiff to the defendant's wife, the plaintiff's accounts should be called for and examined; as, in transactions of this nature, a merchant's accounts, if satisfactorily proved, constitute sufficient documentary evidence to establish a claim for payment for goods delivered. *Augah Mohomud Ismayel Saib* v.

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[1] Mr. Tayler thought that, being unauthenticated, they could not be received as legal evidence, and referred to the cases of *Bunsee Dhur Nundee* v. *Mirza Mookumud Shureef*, 2 S. D. A. Rep. 271, and *Sham Dass* v. *Devi Dayal.* 5 S. D. A. Rep. 154.

Shumshamooddowlah. 20th Aug. 1849. S. A. Decis. Mad. 42.—Hooper.

95. A single account-book is admissible as evidence, though it be not so satisfactory evidence as a regular set of books, such as are usually kept by bankers. *Guneshee* v. *Purshun and another.* 5th Feb. 1850. 5 Decis. N. W. P. 34.—Begbie.

96. No weight can be attached to accounts professing to account for the proceeds of *sole* management, when, in his defence, the plea of the party producing them was, that he was *not* sole manager. *Beejye Gobind Bural* v. *Kallee Dass Dhur and others.* 10th June 1850. S. D. A. Decis. Beng. 279. — Barlow, Jackson, & Colvin.

(d) Other Documents.

97. It is incumbent on a party repaying money, in case of the original document of its receipt or deposit having been lost, to have that fact inserted in the new receipt taken for repayment or restoration. *Sheikh Imaum Buksh* v. *Sheikh Ghoolam Rusool.* 7th May 1845. S. D. A. Decis. Beng. 150.—Reid, Dick, & Gordon.

98. The production of a receipt is not necessary to prove the pay ment of rent of an *Agore Buttai* tenure. *Sheikh Nowazesh Hussein* v. *Kadira Begum.* 18th June 1845. S. D. A. Decis. Beng. 197.—Tucker, Reid, & Barlow.

99. The Court at large allowed the appellant to file several material documents, which he was unable to file in the Zillah Court, as he was before ignorant of their existence, and returned the case for re-trial; the respondent to be allowed also to file any documents or witnesses which he might wish to produce to meet the exhibits filed by the appellant. *French* v. *Kishen Koomar Khan.* 28th Jan. 1846. S. D. A. Decis. Beng. 28.—Reid, Dick, & Jackson.

100. It is not a sufficient proof that a letter alleged to have come from a certain party was really sent by him, that the seal of such party be impressed upon the envelope. *Sirdar Khan* v. *Kullian Dass.* 2d July 1846. 1 Decis. N. W. P. 70. —Thompson.

101. Although documentary evidence may be rejected by the Lower Court, yet a case cannot be disposed of solely with reference to such evidence, without taking notice of the oral evidence adduced, the sufficiency or insufficiency of which must be recorded in the decree. *Budloo Sahoo* v. *Gopaul and others.* 7th April 1847. 2 Decis. N. W. P. 91. —Tayler.

102. The defendant produced a receipt which he declared to bear the signature and seal of the plaintiff, in support of a plea of payment. The plaintiff denied having given the receipt; when, without calling upon the defendant to prove it, it was admitted by the Lower Courts, on the ground that the signature resembled that of the plaintiff on other papers, such as the *Vakálat námeh.* Held, by the Sudder Dewanny Adawlut, that such admission was contrary to the practice which ought invariably to prevail when documentary evidence is contested, the proof of which lies on the person producing it; and the Court, annulling the decisions of the Lower Courts, remanded the case to the Sudder Ameen, with directions to call upon the defendant to prove the receipt, and then proceed to dispose of the case. *Muharaj Koonwur Ramaput Singh* v. *Moorleedhur.* 7th April 1847. S. D. A. Decis. Beng. 104. —Tucker.

103. Where a review of judgment was granted on the production of official documents, setting forth statements counter to those made by the plaintiffs and their witnesses; it was held, that as the former stood by themselves, and were not supported by oral evidence, they were insufficient to meet the evidence of the plaintiffs' witnesses, which was on

oath, and otherwise substantiated. *Ubhee Ram Chowdhree and others* v. *Munorut Singh.* 7th Aug. 1847. S. D. A. Decis. Beng. 402.—Jackson.

104. A document dishonestly suppressed, or the existence of which has been denied by a party to a suit, cannot be received as evidence in a subsequent suit.[1] *Ajoodheeapershad* v. *Madhoram.* 10th Aug. 1847. 2 Decis. N. W. P. 243.—Tayler, Begbie, & Lushington.

105. *Ikrárs* acknowledging a purchase, and promising to pay the purchase-money on a certain date, and for interest on failure of such payment; were held, in advertence to the custom of the country, to be rather of the nature of private communications between the parties, than of bonds or such like engagement, and to be admissible without being stamped. *Muharajab Juggurnath Sahee Deo* v. *Afzul Ali Khan.* 2d Oct. 1847. S. D. A. Decis. Beng. 597.—Tucker, Barlow, & Hawkins.

106. In a suit for the recovery of certain lands and *Wásilát*, *Kabúliyats* were produced by both parties, and the witnesses deposed in favour of their respective principals. The plaintiffs, however, held a *Sarhadd Bandí*, or boundary record, and a map, made by the Ameen deputed to the spot when the Government settlement was made, before the dispute for the lands commenced, and these were considered conclusive as to the claim of the plaintiffs being a just one. *Muharajah Roodur Singh* v. *Nukched Singh and others.* 13th Jan. 1848. S. D. A. Decis. Beng. 13.—Rattray.

107. Receipts for rent are not to be rejected merely because payments of various dates are written on the same paper, this being the practice in some estates. *Jykunt Chuckerbuttee and others* v. *Ranee Bhoobun Maye and others.* 8th June 1848. S. D. A. Decis. Beng. 519.—Jackson, Hawkins, & Currie.

108. A document having been once declared genuine by a competent Court, cannot be again disputed in any suit between the same parties. *Noyandee Molla and others* v. *Zumeeroodeen and another.* 17th June 1848. S. D. A. Decis. Beng. 542.—Tucker, Barlow, & Hawkins.

109. The receipt of an Ameen appointed by the Court to realise money cannot be admitted as evidence on which to found a judgment, unless duly stamped under Schedule A. heading 45. of Reg. X. of 1829. *Rajah Soomaree Buhadur Sein* v. *Lalla.* 12th July 1848. 3 Decis. N. W. P. 227.—Cartwright.

110. A letter cannot be admitted as evidence unless "proved" according to the provisions of Sec. 7. of Reg. III. of 1803. *Gopeenath* v. *Indurmun Ram Sahoo.* 31st July 1848. 3 Decis. N. W. P. 265.—Tayler, Thompson, & Cartwright.

111. In a suit regarding the exact amount of indigo cultivation injured by a defendant, the defendant is not entitled to bring forward in Court maps which he neglected to produce before an Ameen, who was regularly deputed for the purpose of making a local investigation. *Tarnee Churn Pukrashee* v. *Elias Marcus.* 12th June 1850. S. D. A. Decis. Beng. 290.—Barlow, Jackson, & Colvin.

112. Nor is it competent to the defendant to bring forward, as evidence, a *copy* of an alleged petition by a party who was examined as a witness for the plaintiff, but whom he, the defendant, did not, on his part, examine in regard to the petition. *Ibid.*

113. Where no cause for the delay is shewn, exhibits not offered in the Court of first instance, or in appeal, will not be received by the Sudder Dewanny Adawlut upon a second application for a review of judgment. *Watson* v. *Sreemunt Lal Khan.* 2d July 1850. S. D. A. Decis. Beng. 327.—Barlow.

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[1] See the case of *Sufdur Hossein* v. *Enayut Hossein.* 1 S. D. A. Rep. 111.

(e) Production of Documents.

114. Documentary proofs should not merely be exhibited, but actually filed with the record, and objections of parties affected by them taken. *Ramsuroop Panday* v. *Sheikh Imdad Ali and others.* 5th July 1847. 7 S. D. A. Rep. 351.—Tucker.

115. If there be reason to think that a missing document, alleged to be in the possession of the defendant, be not in his possession, or be vexatiously called for by the plaintiff, who has knowingly foregone many opportunities for the inspection of it, the Court will not interfere, but will leave the plaintiff to institute a separate action for the production of papers. *Khajeh Gabriel Avietick Ter Stephanoos* v. *Gasper Malcolm Gasper and others.* 7th Aug. 1849. S. D. A. Decis. Beng. 330.—Barlow, Colvin, & Dunbar.

(f) Parol Evidence in proof of Writings.

116. A receipt being neither signed nor witnessed, cannot be proved by parol evidence.[1] *Heera Ram Tewarree* v. *Rughober Misser.* 10th May 1847. S. D. A. Decis. Beng. 136.—Rattray, Dick, & Jackson.

117. When a document is inadmissible (under the Stamp Laws, for instance) no decree can be given *merely* upon oral evidence adduced in support of that document. *Ranee Boobun Mye Dibbea* v. *Gopenath Misr.* 20th April 1848. S. D. A. Decis. Beng. 349.—Hawkins.

118. *A* held a decree against *B* and *C*, whose rights were inherited by the defendants. The plaintiffs were mortgagees of the landed property of *B* and *C*, and in order to protect the property from sale under *A*'s decree, they, at the request of *A*'s debtors, satisfied his claim, paying the money into the Collector's office. Held, that the receipt of *A*, supported by oral testimony, was complete proof of the liability of the defendants to pay the money sued for, and was sufficient to ground an action for debt by the plaintiffs against the defendants. *Jeesook and others* v. *Mohur Singh.* 17th June 1850. 5 Decis. N. W. P. 121.—Begbie, Deane, & Brown.

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8. *Secondary Evidence.*

119. The Court will not be satisfied with secondary evidence when better might be forthcoming. *Girwur Sing* v. *Pertaub Narain.* 14th April 1845. S. D. A. Decis. Beng. 112.—Rattray, Tucker, and Barlow.

120. Held, that the simple averment of a Principal Sudder Ameen, that the copy of a deed was a true copy, when he was removed to Behar, and no longer officially connected with the case, which was pending in the Patna Court, could not be received as evidence in a Court of Justice. *Gokul Chund Sahoo* v. *Meer Abdoollah.* 26th Dec. 1845. S. D. A. Decis. Beng. 478.—Rattray, Tucker, & Barlow.

121. A copy of a deed filed in Court, the original not being forthcoming, and differing from another copy obtained from the office of the Register of Deeds, was held not to be admissible, there being no *data* on which the Court could determine which copy was the correct one. *Mt. Ushrufoonissa and others* v. *Mt. Nooroonissa Begum.* 12th Nov. 1846. S. D. A. Decis. Beng. 380. —Reid & Barlow.

122. Witnesses to a deed being forthcoming, it was held to be irregular to have recourse to copies of their depositions in another case affecting other parties. *Ram Mookerjea* v. *Ramdoolal Chuckerbutty and others.* 6th July 1847. 7 S. D. A. Rep. 352.—Tucker.

123. The original record of a case having been destroyed by fire, the Appellate Court should call upon

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[1] But see the case of *Eduljee Framjee* v. *Abdoolla Hajee Cherak.* 1 Moore Ind. App. 461.

the parties to file such evidence as they might possess or be able to procure, as well as to state whether they wished the witnesses, whose depositions had been taken in the Lower Court, to be re-examined. *Byjnath Sein* v. *Gopee Kaunth Rae and others.* 19th Aug. 1847. 7 S. D. A. Rep. 386.—Hawkins.

123 *a*. Where the record of a case in the Court of first instance had been destroyed by fire; it was held, that the Lower Appellate Court should have held a proceeding calling upon both parties to file copies of such papers as they might have in their possession, and also have examined any previously examined witnesses the parties might have wished to have recalled; the parties, moreover, not to be limited to the proof adduced in the Court of first instance, should the Lower Appellate Court see any good reason for admitting additional evidence. *Raychund Raee Chowdhree* v. *Kalikunth Buttacharj and others.* 23d March 1848. S. D. A. Decis. Beng. 221. —Hawkins.

124. Where a document was in the hands of the defendant, the plaintiff was allowed to prove its contents by secondary evidence. *Fukeer Chundur Bukshee and another* v. *Goluck Chundur Shah.* 21st Feb. 1848. S. D. A. Decis. Beng. 103. —Jackson.

125. Copies of depositions made before another tribunal by persons still in existence (for any thing shewn to the contrary on the record) cannot be received as evidence. *Chowdhree Muhabeer Singh and others* v. *Sheo Purshad Bhuggut.* 5th July 1848. S. D. A. Decis. Beng. 647. —Tucker.

126. Copies of depositions of witnesses cannot be received in evidence without ascertaining whether the witnesses are still living, and could be produced to give evidence in the usual manner. *Kalinath Bhoomeek and others* v. *Hurdoorga Chowdhrain.* 26th Dec. 1849. S. D. A. Decis. Beng. 486.—Jackson.

127. If a plaintiff file copies (on stamp paper) of an *Ikrár námeh* which forms the ground of action, the said *Ikrár námeh* itself being written on unstamped paper, and, consequently, not a legal exhibit in a Civil Court, he is liable to a nonsuit, unless he shew good cause for his departure from the usual course of proceeding. *Mudun Mohun* v. *Buldeo Dass.* 30th May 1850. 5 Decis. N. W. P. 99.—Begbie, Deane, & Brown.

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9. *Onus Probandi.*

128. The *onus probandi* of exemption from rent lies on the defendant. *Ghosain Doss* v. *Gholam Moheeoodden and another.* 28th Jan. 1846. S. D. A. Decis. Beng. 20. —Reid, Dick, & Jackson. *Bulram Punda and another* v. *Sheikh Gool Mohumud.* 28th Jan. 1846. S. D. A. Decis. Beng. 25.—Reid, Dick, & Jackson. *Koose Chuckerbuttee* v. *Sheikh Ghool Mohumud.* 28th Jan. 1846. S. D. A. Decis. Beng. 27.—Reid, Dick, & Jackson.

129. The *onus probandi* of exemption from enhanced rates, claimed by a *Talookdár*, not of the nature specified in Sec. 51. of Reg. VIII. of 1793, rests with him. *Kali Das Neogee* v. *Dyanath Raee and others.* —10th Aug 1847. 7 S. D. A. Rep. 378.—Hawkins. *Nubboo Komar Chowdhree and others* v. *Ishwour Chundur Chuckerbuttee and others.* 7th June 1848. S. D. A. Decis. Beng. 515.—Tucker.

130. In a suit to try the legality of the transfer of a debt, by a surety in appeal, subsequently to his declaration of insolvency; it was held, that the *onus probandi* as to the date of the act of transfer lay with the plaintiff, who failing therein, judgment went against him. *Jewun Lal and another* v. *Mukhun Lal.* 5th April 1847. S. D. A. Decis. Beng. 100.—Rattray & Jackson. (Dick dissent.)

131. The proof of a plea of limitation rests wholly on the party advancing it. *Sheonarain Ghose* v. *Ranee Jymunnee and others.* 31st July 1847. S. D. A. Decis. 378. —Tucker, Barlow, & Hawkins.

132. The *onus probandi* as to what has become of property illegally attached through an agent, rests with the party illegally attaching such property through such agent; and unless he can prove that it was restored to the plaintiff, he is bound to make good the value of it. *Jobah Chowdhree* v. *Pertab Nurain Singh.* 6th Jan. 1848. 7 S. D. A. Rep. 423.—Tucker.

133. Where the plaintiff sued for arrears of rent, and the defendant pleaded dispossession of the lands, and payment of the full amount due by him; it was held, that such pleas being special, the *onus probandi* rested with the defendant. *Joydeb Surma* v. *Lukheenurain Deb.* 8th March 1848. S. D. A. Decis. Beng. 142. —Tucker & Hawkins.

134. A claim to hold land *Lákhiráj*, being of the nature of a special plea, proof of it rests with the party advancing it. *Jugmohun Sein and others* v. *Syudooddeen Khan and others.* 14th March 1848. 7 S. D. A. Rep. 472.—Hawkins.

135. Where it is alleged that property which belonged to a member of an undivided Hindú family was separate property, the burthen of proof as to division lies upon those who assert its separate character.[1] *Gokoolanund Raee and others* v. *Soonder Nurain Raee.* 15th May 1849. S. D. A. Decis. Beng. 151.—Barlow.

136. It is an established rule that the *onus probandi* of self-acquisition lies on the claimant when a question of succession to property, alleged on the other part to have belonged to a family, which is admitted on both sides to have been *generally* joint and undivided in estate, arises between the heirs of a deceased ancestor. *Bamun Das Mookerjee and others* v. *Mt. Tarnee Dibbeah.* 30th Sept. 1850. S. D. A. Decis. Beng. 533.—Barlow, Colvin, & Dunbar.

137. In cases where a claim is preferred on general unquestionable grounds, such as inheritance, and the defendant pleads a special ground, the burthen of proof is on the defendant. *Kummul Munnee Dibbea* v. *Kishen Munnee Dibbea.* 12th July 1849. S. D. A. Decis. Beng. 286. —Dick, Barlow, & Colvin.

138. Where a defendant admits that the ostensible title is with the plaintiff, it is for such defendant to prove the special plea on which he may seek to avoid that title. *Bykunthnath Dutt and another* v. *Moneemohun Bose.* 2d April 1850. S. D. A. Decis. Beng. 89.—Barlow, Colvin, & Dunbar.

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10. *Third Party.*

139. *Uzardárs*, or objectors to the claim of a plaintiff in a suit, cannot be allowed to produce evidence, they not having been made defendants in the suit. *Mt. Kishna* v. *Ram Suhae Missur.* 8th Sept. 1846. 1 Decis. N. W. P. 144.— Thompson, Cartwright, & Begbie.

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11. *Affirmation.*

140. The representative (whether male or female) of a party under Sec. 2. of Act XIX. of 1841, must *personally* make the solemn declaration required by Sec. 3. of that Act. *Chunder Seekur Bose and others, Petitioners.* 11th Sept. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 118.— Tucker, Barlow, & Hawkins. *Mt. Bama Soondree Dossee, Petitioner.* 11th Sept. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 146.—Majority of Judges of the Sudder Dewanny

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[1] And see the case of *Dhurm Das Pandey* v. *Mt. Shama Soondri Dibiah.* 3 Moore Ind. App. 229.

Adawlut of Calcutta and the North-western Provinces.

141. A statement without oath, and without the usual declaration in lieu of oath, cannot be received in evidence. *Bissessuree Dibbea* v. *Eshenchundur Chuckerbuttee.* 21st Feb. 1848. S. D. A. Decis. Beng. 100.—Jackson.

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12. *In Appeal.*

142. An appellant should be allowed an opportunity of proving his allegation that the Lower Court would not let him file a list of witnesses. *Kashi Pershad* v. *Chulloo Rai and others.* 9th Jan. 1847. S. D. A. Decis. Beng. 5.—Reid.

143. Material documentary evidence, produced in appeal, was rejected, it not having been even mentioned in the petition of appeal, and no reason having been assigned for its non-production in the Court of first instance. *Ranee Bhoobun Mayee* v. *Koonwur Bhyrobe Indur Narain Raee.* 27th April 1847. S. D. A. Decis. Beng. 111.—Dick.

144. Proofs withheld from the Lower Courts are not, without satisfactory cause shewn, admissible in appeal. *Rajah Mahtab Chunder* v. *Lall Mohun Bunnerjee.* 26th May 1847. S. D. A. Decis. Beng. 171. —Dick, Jackson, & Hawkins. *Kullundur Ali Khan* v. *Mt. Kungul Bibi.* 3d Jan. 1848. S. D. A. Decis. Beng. 1.—Rattray, Dick, & Jackson. *Noor Ali and another* v. *Nobokishen Baboo and another.* 11th June 1850. S. D. A. Decis. Beng. 289.—Barlow, Jackson, & Colvin.

145. Although a party is not entitled as of right to be heard in the Appellate Court upon evidence which he has neglected to file in the Lower Court, he is entitled to be heard upon such evidence as was filed in the Lower Court before the neglect occurred. *Ram Buksh Raee* v. *Sheo Ram Raee and others.* 9th June 1847. 7 S. D. A. Rep. 312.—Dick, Jackson, & Hawkins.

146. It is discretionary with a Judge to act on evidence rejected by his predecessor. *Ibid.*

147. Evidence not furnished, after receiving due notice from the Lower Court, within the period prescribed by law, cannot be received in appeal without sufficient reason being assigned for the neglect to produce it. *Kullundur Ali Khan* v. *Mt. Kungul Bibi.* 3d Jan. 1848. S. D. A. Decis. Beng. 1.—Rattray, Dick, & Jackson.

148. An Appellate Court must, in its decree, assign reasons for admitting evidence which has been rejected by the Lower Court. *Poothee Khan and others* v. *Ali Newaz Khan and others.* 4th Jan. 1848. S. D. A. Decis. Beng. 2.—Hawkins.

149. And if it discredit the evidence adduced in the Lower Court as contradictory, it should clearly state the contradictory points. *Gudadhur Shah* v. *Petumber Shah.* 14th June 1847. S. D. A. Decis. Beng. 248.—Tucker. *Radhamohun Sircar* v. *Sheikh Hurree Mullik.* 7th Jan. 1848. S. D. A. Decis. Beng. 8.—Hawkins.

150. The original record of a case having been destroyed by fire, the Appellate Court should call upon the parties to file such evidence as they might possess or be able to procure, as well as to state whether they wished the witnesses whose depositions had been taken in the Lower Court to be re-examined. *Byjnath Sein* v. *Gopee Kaunth Raee and others.* 19th Aug. 1847. 7 S. D. A. Rep. 386.—Hawkins.

151. Where the record of a case in the Court of first instance had been destroyed by fire; it was held, that the Lower Appellate Court should have held a proceeding, calling upon both parties to file copies of such papers as they might have in their possession, and also have examined any previously examined witnesses the parties might have wished

to have recalled; the parties moreover not to be limited to the proof adduced in the Court of first instance, should the Lower Appellate Court see any good reason for admitting additional evidence. *Roychund Raee Chowdhree* v. *Kalikunth Buttacharj and others.* 23d March 1848. S. D. A. Decis. Beng. 221.—Hawkins.

152. When documentary evidence is rejected by the Court of first instance, but admitted in appeal, the Appellate Court should give reasons for such admission. *Kutteeannee Dibbea and others* v. *Pursun Komar Thakoor and others.* 18th April 1849. S. D. A. Decis. Beng. 118.—Jackson.

153. A special appeal was admitted where the plaintiff stated that a document, material to his case, as disproving the statements of the opposite party, had been mislaid when the original and appeal suits were under trial, and had been subsequently recovered. The Judge was ordered to review the appeal, and, after calling upon the plaintiff to file the said document, and taking evidence on its authenticity, to pass judgment *de novo.* *Mootooveerun Chetty* v. *Streenewasarow and another.* 2d July 1849. S. A. Decis. Mad. 14.—Thompson.

154. A plaintiff having been called upon expressly, by the Lower Court, by a proceeding under Sec. 10. of Reg. XXVI. of 1814, to file proofs of payment of reserved rents, was not allowed to file in appeal receipts which, notwithstanding that requisition, he had failed to tender in the Lower Courts. *Bibi Roufun and others* v. *Sheikh Majum Ali and others.* 16th May 1850. S. D. A. Decis. Beng. 205.—Dick, Jackson, & Colvin.

EXAMINATION OF WITNESSES.

I. IN THE SUPREME COURTS.—See EVIDENCE, 2, 3.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *In Civil Cases.*—*See* EVIDENCE, 42 *et seq.*

2. *In Criminal Cases.*—*See* CRIMINAL LAW, 29 *et seq.*

EXCLUSION FROM INHERITANCE.—See INHERITANCE, 26 *et seq.*

EXECUTION.

1. A fund in the hands of a receiver in an equity suit, and ordered to be paid to *A B*, is not seizable under a *fieri facias* against *A B.*[1] *Mackillop* v. *Reed.* 20th Feb. 1845. Montriou, 46 Note.

2. Money in the hands of a receiver, and ordered to be paid to *A B*, a party to the suit. A *fieri facias* had issued against *A B*, defendant-at-law. The Sheriff gave notice to the receiver that he seized the sum payable to *A B*. Motion, by the plaintiff-at-law, for a stop order, was refused, the fund not being seizable under, nor bound by, the writ. *Bonnerjea Suits.* 20th Feb. 1845. Montriou, 47 Note.

3. *A*, as attorney of *B*, held money received under a judgment, having covenanted in a deed between *B*, *A*, and *C*, to hold and apply such money in trust (*inter alia*), to satisfy *C* monies advanced and to be advanced by him in maintenance of the action in which the judgment was obtained. For part of these monies *C* subsequently recovered a judgment at law against *B*, upon the ground that they were actually lent at the Mauritius, where the law of Champerty, or maintenance, does not obtain. The money in the hands of *A* was the only means of satisfying *C*'s judgment. Held,

[1] This case overrules that of *Rogonauth Chund* v. *Bissonauth Ghose.* Cl. R. 1829, 152.

that such money was not seizable under an execution against *B. Rajcoomar Mookerjee* v. *Vauthier.* 19th Jan. 1846. Montriou, 14.

4. The Court will not inquire into the existence or validity of a disputed debt, upon motion by a third party to enforce execution against it.[1] *Ibid.*

5. The interest of a wife, during coverture, in land of which she was seised at the time of her marriage, does not pass by the Sheriff's bill of sale of her "right, title, and interest" therein, upon a seizure under a judgment and writ of *fieri facias* against the wife; although the husband's conduct evince an intention to abandon his own interest, and the wife have actual enjoyment and possession of the land. *Doe dem. Hurreehur Dutt* v. *Isaac.* 19th Jan. 1846. Montriou, 17.

6. *A*, whilst building two boats, in order to raise funds for their completion, makes a *bonâ fide* assignment of them by way of mortgage. After some months, the boats, being nearly finished, are seized by the Sheriff under two writs of *fieri facias* against the mortgagor: one writ bore date prior to the mortgage, the other subsequent. Held, in trover against the Sheriff, that the seizure was lawful, and the defendant entitled to a verdict on the plea of "not possessed." *Sreenath Neoghy* v. *Stopford.* 13th Dec. 1849. 1 Taylor & Bell, 144.

EXECUTION OF DECREE.—See Practice, 307 *et seq.*

EXECUTION OF SENTENCE.—See Criminal Law, 134, 135.

EXECUTORS AND ADMINISTRATORS.

I. In the Supreme Courts, 1.

II. In the Courts of the Honourable Company, 9.

[1] See *Dwarkanauth Mullick* v. *Gonsalves.* Mor. 299.

I. In the Supreme Courts.

1. The Registrar is not entitled, *ex officio*, to oppose the grant of administration to the *de facto* husband of an illegitimate person deceased, upon the ground of the invalidity of the marriage, the lady being of disordered mind at the time, and so not competent to contract matrimony.[2] *In the Goods of Warman.*[3] 12th Feb. 1846. Montriou, 90.

2. The power to grant probate and administration is general, and not limited to where the death occurs within Bengal, Behar, and Orissa. *In the Goods of Shelton.* 19th March 1846. Montriou, 167.

3. Where there is proof of testacy, the Court cannot grant general administration. *Ibid.*

4. But semble, a limited grant will be made, on special grounds of necessity. *Ibid.*

5. Semble, Neither the Court, nor the Registrar, in granting and applying for administration *ex officio*, possess discretionary power; it must be shown to be his duty to apply, and then the grant is of course. *Ibid.*

6. Probate of a will will be granted on an affidavit shewing every reason to believe the testator to be dead, although his death be not expressly deposed to; but the Court will exercise its discretion in imposing terms on the executor. *In the Goods of White.* 14th Feb. 1849. 1 Taylor & Bell, 10.

7. Letters of administration, when granted to a Hindú estate, will only be granted on the consent of all the next of kin. *In the Goods of Sumboochunder Mitter.* 3d July 1849. 1 Taylor & Bell, 39.

8. On application for probate, the affidavit of attesting witnesses is not

[2] See *Headman* v. *Powell.* 1 Add. 65.

[3] Administration was subsequently granted to the husband. The Registrar filed his petition of appeal, and entered the usual recognisances; but the prosecution of the appeal was suspended pending a reference to the Solicitors of Her Majesty's Treasury.

necessary in the case of an informal attestation clause, as it will be presumed that the will was duly executed. *In the Goods of Walker.* 8th Nov. 1849. 1 Taylor & Bell, 79.

II. In the Courts of the Honourable Company.

9. Sec. 26. of Reg. V. of 1812, declaratory of the competency of the Zillah Judge to interfere in cases of disputes between proprietors of joint undivided estates for the due discharge of the public revenue, was held, by the Sudder Dewanny Adawlut, to be decidedly inapplicable to the removal of executors and guardians in possession of property under the provisions of Reg. V. of 1799. *Petruse Necose Pogose, Petitioner.* 4th April 1835. 1 S. D. A. Sum. Cases, Pt. i. 7.—D. C. Smyth & Robertson.

10. The son of a deceased executor is not liable for claims against his father in his capacity of executor. *Imlach* v. *Syud Abdoollah.* 15th July 1847. S. D. A. Decis. Beng. 334.—Rattray, Barlow, & Jackson.

11. The application of the son of a deceased executor to the Court to draw some money, then in deposit, on account of the estate, was rejected on the ground, distinctly set forth, of such son not being the executor. *Ibid.*

12. Where there was nothing to shew that an executor, dying and leaving his co-executor him surviving, had ever received any part of the assets of the testator; it was held, that an action could not be maintained against the son of such executor, as his father's heir, for a sum of money due to a legatee under the will. *Mt. Soluchna* v. *Harris and another.* 4th July 1848. S. D. A. Decis. Beng. 636.—Hawkins.

13. *A*, having admitted before the Supreme Court the right of *B*, as executrix of an estate, and having been a consenting party to a decree and order of that Court, by which *B* drew, as such executrix, a sum of money from the custody of the Court, cannot subsequently sue in the Company's Courts to compel the refund of the money so drawn, on the ground that *B* was not executrix of the estate; and such admission and consent will bar *A* from questioning in the Company's Courts the fact of *B* being the executrix for the estate, in reference to any other portions of the estate property, as a declaration of title as executrix cannot be held good as regards one portion of an estate, and bad as regards another. *Judoonath Sundyal and others* v. *Kunnuckmonee Dibeea and others.* 27th May 1850. S. D. A. Decis. Beng. 228.—Dick & Colvin. (Jackson dissent.)

14. Where *A* brought a suit, as executor, against *B*, for possession of the property of the estate, and the defence was that *B* was an implied co-executrix with *A* (inasmuch as *A* was, under the will, to do every act with the consent of *B*), and that, therefore, *A* could not bring, as *executor*, an adverse suit against *B*; the plea was disallowed, the direction of the will being that *A* was *first to take possession of all the property*, and *then* to act with the consent of *B*. *Judoonath Sundyal and others* v. *Kunnuckmonee Dibeea and others.* 27th May 1850. S. D. A. Decis. Beng. 228.—Dick, Jackson, & Colvin.

EXTENT.

1. A fund in the hands of a receiver in an equity suit, and ordered to be paid to *A B*, is not extendible under a *fieri facias* against *A B*.[1] *Mackillop* v. *Reed.* 20th Feb 1845. Montriou, 46 Note.

[1] This case overrules that of *Rogonauth Chund* v. *Bissonauth Ghose.* Cl. R. 1829, 152.

FAIRS.—See Action, 47. 123. 125; Dues and Duties, 2.

FALSE IMPRISONMENT.

1. Where a bailiff has received an erroneous order from the Sheriff to release a person in custody, and declines to act until he has communicated with his principal, the intermediate time does not constitute, as between the bailiff and the person in custody, a false imprisonment. *Beharriram* v. *Lyon.* 10th Nov. 1847. Taylor, 177.

2. Trespass for false imprisonment. Plea: Not guilty by the Statute. The defendant (a Mofussil Magistrate and Justice of the Peace of Calcutta) issued a summons to one *A* charged with assaulting *B*. The constable who served the summons reported that *A* had committed a contempt of process, and had refused to attend. The defendant then passed an order for the caption of *A*, unless he appeared by a given day. The constable again made a similar report, and also made deposition before the junior Magistrate (to whom the case had been referred for trial), implicating both *A* and his father. The junior Magistrate wrote an order for issuing a warrant, and accordingly upon that order a warrant was issued directing the apprehension of both father and son, and signed by the defendant as Magistrate and J. P. Under this warrant, *A* and his father were taken. Held, that the defendant, having signed the warrant as a Justice of the Peace, must be taken to have issued it in that character, and that, as Justice of the Peace, he had acted wholly without jurisdiction, and was liable. *Gasper* v. *Mytton.* 10th Feb. 1848. Taylor, 291.

3. In an action for false imprisonment under the warrant of the Judge of the Civil Court in the Tenasserim provinces, against such Judge (assuming such province not to be annexed to the Presidency of Fort William), it is not sufficient for such Judge, in order to entitle him to the protection of the 21st Geo. III. c. 70. s. 24, to prove that he acted as Judge of a Court which *de facto* exercised jurisdiction on the subject-matter in respect of which the imprisonment took place; but it is necessary for the defendant to give some evidence of the origin and constitution of such Court, or to shew that it had some legal foundation for the exercise of such jurisdiction. *Fewson* v. *Phayre.* 23d Aug. 1848. Taylor, 405.

FALSE PERSONATION.—See Criminal Law, 56. 177, 178.

FAMILY, UNDIVIDED.—See Undivided Estate, *passim.*

FARÍKH KHATT.—See Compromise, 4.

FARMER.

1. A Sudder farmer was held to be exonerated from liability for acts of dispossession committed by his under-farmer. *Prusunno Nath Raee* v. *Baneekunth Raee and others.* 5th June 1847. S. D. A. Decis. Beng. 195.—Tucker, Barlow, & Hawkins.

2. Where *A* and his father had conjointly been farmers of a property during forty years, and *A* himself had been in possession for thirty years; it was held, that such was not sufficient to continue him in possession during life, after the expiration of his lease. *Tikut Sodhur Singh* v. *Gundoo Singh.* 8th Jan. 1849. S. D. A. Decis. Beng. 9.—Dick.

FARZÍ.

I. Generally, 1.
II. Actions.—See Action, 16.

I. Generally.

1. The mere fact of a purchase being made in the name of another person does not confer any legal title on the *nominal* to the exclusion of the real proprietor. *Ruggoo Mull* v. *Bunseedhur.* 29th June 1850. 5 Decis. N. W. P. 147.—Begbie, Deane, & Brown.

FATWA.

1. Where the Moonsiff decided a case on a point of Muhammadan law, and the Principal Sudder Ameen reversed his decision on the ground that the law, as expounded by the Moonsiff, was wrong; it was held, that before reversing the decision he should have called for a *Fatwa* from the law-officer. *Sheikh Hyatim* v. *Cheragh Ali.* 22d Sept. 1848. 3 Decis. N. W. P. 367.—Thompson.

2. It is irregular to submit the entire record for the opinion of the law-officer, as the question propounded ought to be put hypothetically. *Khooblall Singh and others* v. *Sheodyal Mehtoon.* 27th June 1850. S. D. A. Decis. Beng. 321.—Barlow, Jackson, & Colvin.

FEME COVERT.—See Husband and Wife, *passim.*

FERRY.—See Action, 71.

FICTITIOUS SUIT.—See Action, 172.

FIERI FACIAS.—See Execution, 1, 2. 5, 6.; Extent, 1.

FINES.

I. Generally, 1.
II. For Litigious Suits, 4.
III. In Criminal Cases. — See Criminal Law, 136.

I. Generally.

1. The principle of Sec. 110. of Reg. X. of 1819, is, that imprisonment can only be awarded in commutation of fine. *Board of Customs, Salt and Opium, Petitioners.* 12th Aug. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 71.

2. The Government cannot recover a fine, under Sec. 11. of Reg. XXVII. of 1793, from parties making illegal collections, until they have been successfully prosecuted by those aggrieved.[1] *Government, Petitioner.* 13th April 1847. 1 S. D. A. Sum. Cases, Pt. ii. 95.—Rattray, Tucker, & Reid.

3. Fines under Cl. 2. of Sec. 17. of Reg. XIX. of 1814, for refusing or neglecting to deliver in accounts, cannot be inflicted on dependent *Talookdárs.* *Hurnath Surmah Chowdry and others* v. *Collector of Mymensingh.* 19th June 1847. 7 S. D. A. Rep. 347.—Tucker, Barlow, & Hawkins. *Ruttun Munnee Dassee and others* v. *Collector of Mymensingh.* 31st July 1847. S. D. A. Decis. Beng. 381.—Tucker, Barlow, & Hawkins.

3*a*. In a case where the Lower Court had fined an appellant Rs.1000 for not appearing in person when called upon, though present by his *Vakíl* in Court, the Sudder Dewanny Adawlut reversed the order appealed against, as being illegal. *Krishenchandra Chakrabutti, Petitioner.* 16th March 1850. 2 Sev. Cases, 533.—Colvin.

II. For Litigious Suits.

4. Sec. 40. of Reg. XXIII. of 1814 does not authorise the imposition of a fine for a litigious, or vexatious suit; and when a fine has been imposed by the Subordinate Court (viz. by a Moonsiff or Sudder Ameen) the case should be sent back

[1] The application in the Zillah Court for the fine must be on an eight anna stamp paper.

to the Subordinate Officer, with instructions to proceed in the manner laid down in Secs. 40. and 73. of the above Regulation, fines being leviable only on account of Government, whilst damages, if awarded, belong to the party declared by the decree to be entitled to them.[1] *Heera Lall* v. *Mt. Moonee and another*. 7th June 1849. 4 Decis. N. W. P. 150.—Thompson.

5. It is illegal for a Principal Sudder Ameen to fine an appellant for a litigious appeal from the decision of a Moonsiff. *Rajah Juggut Singh* v. *Polundur Singh.* 16th July 1849. 4 Decis. N. W. P. 235.—Thompson, Begbie, & Lushington.

6. A fine for a litigious plaint, under Sec. 12. of Reg. III. of 1793, can only be imposed by the Courts of first instance: an order of an Appellate Court, imposing such a fine, is illegal. *Chand Khan* v. *Puncharam Bagdee and others.* 4th June 1850. S. D. A. Decis. Beng. 251.—Dick & Dunbar.

FIXED RENT.—See ASSESSMENT, 22 *et seq.*

FORCIBLE DISPOSSESSION.

1. The purchaser of property sold in execution of a decree having been forcibly ejected by the party complained against, within a month of obtaining possession under the orders of the Civil Court, the Sudder Dewanny Adawlut held, that the Court could interfere summarily to uphold the possession of the purchaser.[2] *Ram Komar Chowdree, Petitioner.* 19th Aug. 1835. 1 S. D. A. Sum. Cases, Pt. i. 9.—D. C. Smyth.

2. An hereditary resident cultivator, having a prescriptive right of occupancy, cannot be ousted unless in balance. *Oodhoyram Raee* v. *Ramchurn Raee and others.* 19th Sept. 1850. S. D. A. Decis. Beng. 490.—Barlow, Jackson, & Colvin.

FORECLOSURE.—See MORTGAGE, 5. 54 *a. et seq.*

FOREIGNER.—See ALIEN, 1, 2.

FÓREIGN TERRITORIES.—See CRIMINAL LAW, 35; JURISDICTION, 87 *et seq.*

FORFEITURE.—See CONFISCATION, *passim.*

FORGERY.—See CRIMINAL LAW, 36. 137 *et seq.*

FRAUD.—See CRIMINAL LAW, 37.

FRAUDULENT ALIENATION.—See EVIDENCE, 25.

FREIGHT.—See SHIP, 2.

FUNERAL RITES.—See HINDÚ WIDOW, 12 *et seq.*

FURZEE.—See FARZÍ.

FUTWA.—See FATWA.

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[1] Construction, No. 966, 28th Aug. 1835.

[2] The dispossession in this instance took place within a month of obtaining possession from the Court's officer. The spirit of the decision is, not to limit the summary interference of the Court to one month, but to authorise such interference when the dispossession is sufficiently recent to bring the case, as it were, under the head of "resistance to the Court's process" regarding which, the Judge, after hearing both sides, must exercise a sound discretion.

GAMING.[1]

I In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 6.

I. In the Supreme Courts.

1. A wager on the future prices of opium at the East-India Company's public sales was held to be illegal, on the ground that such a wager creates, in one of the contracting parties, an interest, tending to influence that party to endeavour to diminish the amount of revenue payable to the Company on the sale of that commodity. *Jomauram and another* v. *Hoormasjee Bawunjee Modee.* 1st Feb. 1847. Taylor, 1.

2. By the common law of England, in force in India, an action may be maintained on a wager, although the parties had no previous interest in the subject-matter on which it is laid, if such wager be not against the interest or feelings of third persons, does not lead to indecent evidence, and is not contrary to public policy.[2] *Ramloll Thackoorseydass and others* v. *Soojummull Dhondmull and another.* 28th Feb. 1848, 6 Moore, 300. 4 Moore Ind. App. 339.

3. The mere circumstance that a wager concerns the public revenue, or creates a temptation to do wrong, will not render it illegal. *Ibid.*

4. A wager upon the average price which opium should fetch at the next Government sale at Calcutta, the plaintiffs having to pay the defendants the difference between such price and a sum named per chest, and the defendants having to pay the difference between such price and the sum so named, if the price should be above that sum, is not an illegal wager, or contrary to public policy, though the proceeds of the opium sold at Calcutta formed part of the Government revenue. *Ibid.*

5. The Statute 8th & 9th Vict. c. 109., amending the law relating to games and wagers does not extend to India.[3] *Ibid.*

II. In the Courts of the Honourable Company.

6. Indigo seed is supplied from Mirzapor by contractors, who engage to deliver it to their several customers by stipulated periods, bringing themselves under a heavy responsibility on any failure on their part to perform the terms of the contract. To meet this, the contractor makes advances in money to a third party for the seed, which he has engaged to supply to the planter, stipulating that it shall be delivered to the contractor on a particular day, and retaining authority to supply himself at the market price with any deficiency in the quantity which should have been delivered. Held, that this cannot be considered as a gambling transaction. *Bindrabund* v. *Menzies.* 17th Aug. 1847. 2 Decis. N. W. P. 261.—Tayler & Lushington. (Begbie dissent.)

7. The plaintiffs and defendants entered into engagements for the purchase and sale of cotton on the following terms. The price of cotton is first fixed between the parties on an agreed rate, and the one party engages to purchase of the other a certain quantity of cotton, and the profit or loss on the transaction is to be adjusted by the market price of

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[1] By Act XXI. of 1848, all wagers are null and void, and no suit can be entertained in any Court of Law or Equity for recovery of any sum of money or valuable thing alleged to be won on any wager.

[2] The original judgment in this case will be found in Vol. II. of this work, p. 415 *et seq.* The above decision reversed the judgment of the Supreme Court at Bombay, confirming the view of the case taken by Sir Erskine Perry, the present learned Chief Justice of that Court, who dissented from Sir David Pollock, C. J.

[3] See the preceding note, 1.

cotton saleable at Mirzapor on a future date fixed between the parties; and should the Mirzapor rate exceed that fixed between the parties, the purchaser of the article is to receive the excess in money as profit, and the seller loses so much, and *vice versâ*. On making these agreements, the purchaser pays down a certain sum as an earnest of the transaction, and entries are made in the *Bahí Khattas* of both parties accordingly, and *Rukahs*, or notes of hand, are exchanged between them; but should the Mirzapor rate turn up the same amount as that fixed at the commencement of the transaction, then the earnest-money paid is returned to the payee, and neither parties make profit or loss. Held, that such a transaction is clearly of a gambling nature, and that no action can be grounded upon it.[1] *Seit Ramanund* v. *Sookhlall and another*. 26th July 1848. 3 Decis. N. W. P. 241.—Tayler.

GANG ROBBERY.—See Criminal Law, 24, 25. 111 *et seq.*

GHATWÂL.—See Debtor and Creditor, 13 *a*.

GHAZB.—See Forcible Dispossession, 1, 2.

GHÁT.

1. Though the sub-letting of a public *Ghát* is illegal, such illegality does not bar the claim of the sub-lessee for any advance of money he may have made to the lessor. *Joganund Pundit* v. *Gunput Singh*. 2d Sept. 1846. 1 Decis. N. W. P. 139. —Begbie.

[1] The opinion of the Hindú law-officer was taken on the legality of the transaction, and he declared that it could not be recognised under the Hindú law as being of a gambling nature.

GIFT.

I. Hindú Law, 1.
II. Muhammadan Law, 7.
III. In the Courts of the Honourable Company, 9.

I. Hindú Law.

1. *A* executed a *Hibeh námeh*, in which he left his property to his five sons, with certain reservations, one of which was, that the family religious rites should be kept up according to a certain estimate, the care of keeping up the rites to be vested in the eldest son, the expense to be divided equally among the sons, and enjoined that the sons should not separate. *B*, one of the sons, having obtained separate possession of his share, refused to contribute to the expense of the rites, and *C*, his eldest brother, sued him for his share of such expense. Held, that the separation of the brothers did not vitiate the *Hibeh námeh*; and that the first object of it being that the family religious rites should be kept up at the joint expense of the sharers, *B* was liable for his share of the expenses. *Puddun Lochun Mullik* v. *Mookta Munnee Gooptea*. 4th March 1846. S. D. A. Decis. Beng. 89.—Tucker, Reid, & Jackson.

2. *A*, a Hindú, had two sons of his own, viz. *B*, the plaintiff's father, and *C*, who died without heirs; he also adopted another son, *D*, and gave him a quarter share in certain lands. *D* had no son, but he had two daughters, *E* and *F*: the latter married the defendant, and died childless before her mother, *D*'s widow. The quarter share, at *D*'s death, was held by his widow, and thence descended to her surviving daughter, *E*, who died childless, having previously given the quarter share to the defendant. The plaintiff claimed as the son of *D*'s brother, and the legal representative of his grandfather *A*. Held, that *E*

had full power to bestow the property upon the defendant, and that the plaintiff had no claim whatever. *Bhola Singh* v. *Girdharee Lall.* 3d Dec. 1846. 1 Decis. N. W. P. 237. —Cartwright.

3. A deed of gift to a Hindú female, executed by her husband, *conjointly* with other joint sharers, cannot be considered as a gift *merely* by the husband, such as to render the property inalienable. *Taramunee Chowdrain* v. *Junuvee Dasee.* 24th Feb. 1847. S. D. A. Decis. Beng. 62.—Reid & Jackson. (Dick dissent.)

4. A deed of gift of a *Zamíndárí*, situate in Midnapor, to a stranger, by the widow of the *Zamíndár* last seised, who died without issue, and which gift was made with the confirmation of the *Bandhus*, the mother's brother's sons, the heirs; was held to be valid by the Bengal law, as against a party claiming the succession, according to the *Mitákshará*, as being descended, in the seventh remove, in the male line from the common ancestor.[1] *Rany Srimuty Dibeah* v. *Rany Koond Luta and others.* 16th Dec. 1847. 4 Moore Ind. App. 292.

5. *A* adopted a son, *B*, and executed a deed with *B*'s natural father, by which he undertook to make him heir to his estate and wealth, and subsequently adopted another son, *C*, during the lifetime of *B*. *B* and *C* both lived in *A*'s house, who, while they were minors, made a division of his ancestral and other estate, between them, in certain proportions; *B*, when he came of age, entered into possession of his share: but *C* being a minor, *A* managed his share, and died during his minority. Held, by the Judicial Committee of the Privy Council, that though *C* had no claim to the ancestral estate, his adoption during the lifetime of *B* being invalid, that *A* had made a gift, so far as he could, of his property, between his two sons, and that therefore effect being given to the intentions of *A*, so far as he had the power of disposing of his own property, by an act, *inter vivos*, without *B*'s consent, *B* was to give up, for the benefit of *C*, the whole property included in the division, to the disposition of which his consent was not necessary. *Rungama* v. *Atchama and others.* 29th Feb. 1848. 4 Moore Ind. App. 1.

6. A deed of gift to a daughter, in which it was provided that her father the donor, though executing the deed when in infirm health, and in contemplation of his death, was to hold possession, and enjoy the profits of his estate, the subject of the gift, during his life, was set aside as fraudulent, and insufficient to bar the liability of the daughter, when succeeding to her deceased father's estate, for her father's debts. *Ramsoondur Raee* v. *Mt. Batunee Dassee and others.* 27th June 1850. S. D. A. Decis. Beng. 318.—Barlow, Jackson, & Colvin.

II. Muhammadan Law.

7. A Muhammadan transferred to his wife all his real and personal property in lieu of dower, by virtue of a *Hibeh bil-Iwaz*, stipulating that he should continue in possession, *as on the part of his wife*, until his death. The deed, immediately after its execution, was forwarded to the Collector for his information, and was attested before him. Held, that such a transaction was valid, and that the gift was good as against the heirs of the donor.[2] *Sarah Begum* v.

[1] The Bengal law was held to be applicable in this case, as, though the family had, many years previously to the institution of the suit, migrated from Bengal to Midnapor, it was proved that they had retained their laws and religious observances.

[2] There is no doubt, that where a husband assigns over to his wife, by deed, all his property, moveable and immoveable, in satisfaction of dower, or in lieu thereof, her right thereto is completely established,

Ghoolam Mahomed Khan. 23d Nov. 1846. 1 Decis. N. W. P. 199.—Thompson, Cartwright, & Begbie.

8. A *Hibeh bil-Iwaz,* alleged to have been given to a wife in consideration of a claim for dower, was set aside as fictitious and collusive, chiefly on the ground of an agreement taken at the same time from the wife by her husband, so restrictive in its terms as to be evidently framed for the purpose of retaining the entire property under the control of the husband, from whom there was, in fact, no more than a nominal transfer to his wife in fraud of creditors. *Chand Khan* v. *Belukkhuna Bibi.* 8th April 1850. S. D. A. Decis. Beng. 105.—Jackson, Colvin, & Dunbar.

and the ownership of the husband is entirely divested, and seisin is not a requisite condition. (Macn. Princ. M. L. 276.) Such an assignment is not an absolute gift, in which case seisin would be necessary; but rather resembles a sale or exchange, being a gift for a consideration, or *Hibeh bil-Iwaz,* to the validity of which possession is not essential. (Macn. Princ. M. L. 52. 217. 221. 276, note). If, however, a sale be "imperfect" (*Fásid*), by reason of there being such a condition that either of the parties to the transaction should derive other advantage than such as might arise from the commutation of goods for goods, the rule is, that such imperfect sale confers no right of property on the purchaser, until the latter be seised of the property with the consent of the vendor, when the legal defect is cured, and the right of property becomes complete in the purchaser. (Macn. Princ. M. L. 42. R. vii. Baillie's Sale, 6, note). The law-officers, both in the Lower Court and the Sudder Dewanny Adawlut, expounded the law as to the curing of the defect of an imperfect sale correctly, but they considered the above transaction imperfect, on account of the stipulation for the possession of the vendor after the execution of the deed, which was an advantage accruing to him other than that arising from the commutation of goods for goods. The Court decided the case in favour of the wife, on the ground of possession, considering that "her possession during the lifetime of her husband was abundantly proved, *i.e.* although her husband was deputed by her to manage the property on her behalf, he only acted as her agent; and that such a circumstance, to all intents and purposes, can only be regarded as her possession in the light contemplated by the law." But if the condition of the husband remaining in possession and acting as his wife's agent rendered the sale imperfect, as the law-officers considered, and also gave the wife a constructive possession of the property, as held by the Court, the agency clause caused and cured a defect in the transaction at one and the same time, which would seem an anomaly.

III. In the Courts of the Honourable Company.

9. The alienation of lands by gift, subsequent to a public notice of sale in execution of a decree, was held to be invalid. *Bulram Das and others* v. *Syud Mohummud Tukee Khan and another.* 13th June 1849. S. D. A. Decis. Beng. 202.—Dick, Barlow, & Colvin.

GOMASHTA.—See Agent and Principal, *passim.*

GOOROO.—See Religious Endowment, 16.

GOSAIN.—See Jurisdiction, 72. Slavery, 2.

GOVERNMENT, JURISDICTION AS TO THE.—See Jurisdiction, 38 *et seq.*

GOVERNMENT PLEADER.—See Pleader, 15.

GRANT.

I. Hindú Law, 1.
II. Muhammadan Law, 1*a*.
III. In the Courts of the Honourable Company, 2.

I. Hindú Law.

1. Held, that, by the Hindú Law,

the alienation of a portion of a *Zamindárí* by a Hindu, in favour of his illegitimate son by a woman of an inferior cast, is valid, provided the portion so alienated do not exceed that given to the legitimate son, if he have one.[1] *Goureevullabha Tavër* v. *Sreematoo Rajah and others.* 8th Nov. 1849. S. A. Decis. Mad. 102.—Thompson & Morehead.

II. Muhammadan Law.

1*a*. An *Istímrárí* grant, with reversion to the descendants of the grantee in perpetuity *Batarík-i dawám Nuslun baad Nuslun,* is, under the Muhammadan law, a heritable and transferable property, and there is nothing in the words *Nuslun baad Nuslun* to exclude a widow from the right of inheritance.[2] *Ranee Roop Koonwur* v. *Rao Nathooram and another.* 13th Aug. 1850. 5 Decis. N. W. P. 240.—Begbie, Deane, & Brown.

III. In the Courts of the Honourable Company.

2. Alienations of land, or its produce, are voidable on the determination of the interest of the alienor, if such alienations are to the prejudice of the rights of Government, or of the successor to the estate. Anon. Appeal, No. 6. of 1821, quoted in S. A. Decis. Mad. 1849, 52.

3. Where a village had been transferred to the defendant, in lieu of wages, free of tax; the Court decided that such alienation was voidable on the determination of the interest of the person who made it. Anon. 1821. Anon. 1841, quoted in S. A. Decis. Mad. 1849, 105.

4. A Judge cannot reverse the decision of a Collector, declaring an invalid *Lákhiráj* tenure to be good and valid, as being held under a *Sanad* with uninterrupted possession from the date of the grant, unless he impugn such decision on the point of possession.[3] *Joykishen Mookerjea and another* v. *Nursing Roy and others.* 31st May 1847. S. D. A. Decis. Beng. 183.—Tucker.

5. A *Zamíndár*, whether auction-purchaser or private purchaser, has not, under Sect. 8. of Reg. XLIV. of 1793, power to cancel a grant of a specific portion of land rent-free, for the express purpose of digging a tank for the benefit of the villagers. *Hurree Mohun Das and others* v. *Pran Kishen Raee.* 18th Aug. 1847. 7 S. D. A. Rep. 384.—Dick, Jackson, & Hawkins.

6. Semble, The mere circumstance of property which had been held by *A* under a grant, and in some instances by preceding members of his family, being afterwards transferred by a renewed grant in *A*'s life-time to *B*, his son, is not sufficient to evidence an hereditary interest, especially when the *Jama*, or rent reserved to the Government, had from time to time varied. *Mt. Ghoolab Koonwur and others* v. *The Collector of Benares.* 17th Dec. 1847. MS. notes of P. C. Cases.

7. But where the grant originally to *A* was in terms which shewed that it was to continue in his family after his death, the property must be treated as ancestral. *Ibid.*

8. When the Government grant away the rights of the State over any tract of land, they have, as exercising by due delegation and succession the actual and active sovereign power, the right to load such grant with any conditions, not injurious to private rights, as they think fit; and a prohibition to alienate the grant

[1] It appears that the *Zamíndárí* was the acquired property of the alienor.

[2] This was the *Fatwa* of the law-officer, and the Court observed that they did not generally acquiesce in the opinion of the absolute alienable character of the grant, but, as the point was not actually before them, in other respects they accepted it.

[3] See Reg. XIX. 1793, Sec. 2. Cl. 1., and Reg. XIV. 1825, Sec. 3. Cl. 2.

beyond the natural life of the holder, is one that the Government may lawfully issue. *Sheoraj Singh* v. *Sahooram Kishen Dass.* 14th Jan. 1850. 5 Decis. N. W. P. 6.—Begbie, Lushington, & Robinson.

9. A certain tract of land was formerly conferred by the Nawáb Vazír on a Rájah deceased, and on his death it was resumed by the officers of the British Government. The Governor-General, by a *Sanad,* in consideration of the claims of the son of the deceased Rájah, assigned the same land to him and his natural heirs, as a *Jágír,* in perpetuity, to remain in his undisturbed possession, and to be allowed to descend, undivided, to the head of the family in perpetual succession. Held, that under the terms of the *Sanad,* as above stated, and of the premises, neither the Rájah, he being a life tenant under the grant from the Nawáb Vazír, nor his son, nor any of their successors, they holding under the *Sanad* of the British Government, which the Court construe to convey to each successive holder only a life interest in the *Jágír,* can or could alienate any portion of that *Jágír,* except during and for the term of his natural life respectively. The land was therefore held not to be liable for a mortgage executed by the Rájah. *Ibid.*

10. Where a grant of lands in perpetuity by the British Government did not contain any condition, either express or implied, to distinguish it from the grants of the former Governments; it was held, that the State, having parted with its interests to the extent conveyed by the grant in perpetuity, saving the reversionary right accruing on the failure of the lineal descendants of the grantee, must be held to have precluded itself from interference in any of the events of succession in the tenure, which would fall under the cognizance of the Courts of Judicature. *Ranee Roop Koonwur* v. *Rao Nathooram and another.* 13th Aug. 1850. 5 Decis. N. W. P. 240.—Begbie, Deane, & Brown.

GUARANTEE.

1. Evidence was received for the purpose of explaining a guarantee in the following form:—"I hold myself responsible to you for the due payment of the draft for Rs. 800 drawn on you by *A B,* and *paid* by you this day;" and the guarantee was supported on proof that the payment of the draft, and the giving the instrument, occurred on the same day. *Shearman and others* v. *Crump.* 3d Dec. 1849. 1 Taylor & Bell, 119.

GUARDIAN.

I. Hindú Law, 1.
II. In the Courts of the Honourable Company, 5.
1. *Generally,* 5.
2. *Right of Guardianship,* 11.
3. *Liability of Guardian,* 12.
4. *Action by.*—*See* Action, 31.

1. Hindú Law.

1. If a father fail to stand forward to protect his children's just rights, or connive at their being deprived of the same, their mother, by the Hindú law, can act as their guardian. *Baee Gunga* v. *Dhurumdass Nurseedass.* 27th July 1841. Bellasis, 16.—Marriott, Giberne & Greenhill.

2. A step-mother is the legal guardian of her infant step-son, even though the parents of the said infant should have made him over to his paternal uncle. *Nunkoo Lall* v. *Mt. Sohodra.* 4th May 1847. 2 Decis. N. W. P. 115.—Lushington.

3. Between the mother and a brother of a minor, the former has the preferable right of guardianship under the *Shastras*[1] and Reg. I. of 1800. *Kooldeep Narain* v. *Rajbunsee Kowur.* 20th Sept. 1847. 7 S.

[1] 1 Macn. Princ. H. L. 103.

D. A. Rep. 395.—Tucker, Barlow, & Hawkins.

4. A minor, on coming of age, is, under the Hindú law, entitled to supersede his half-brothers in the guardianship of his uterine minor brothers, although up to that time the guardianship of the half-brothers is legal. *Dabee Singh and others* v. *Bujroo Singh and others.* 19th Sept. 1850. 5 Decis. N. W. P. 336.—Lushington.

II. In the Courts of the Honourable Company.

1. *Generally.*

5. The Sudder Dewanny Adawlut refused to interfere summarily to put a guardian in possession of the papers and accounts of property to which the right of his ward was contested, and referred the guardian to the usual remedy of an action at law. *Mirtinjai Bose, Petitioner.* 13th March 1837. 1 S. D. A. Sum. Cases, Pt. i. 14.—D. C. Smyth.

6. A guardian cannot be appointed under Reg. I. of 1800 to an alleged adopted minor, whose adoption is disputed. *Sheeb Chunder Kur, Petitioner.* 17th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 108. —Tucker, Barlow, & Hawkins.

7. This, however, does not prevent an action by any friend of the minor suing on his behalf to establish his right. *Ibid.*

8. The alleged guardianship of a minor, if disputed by another claimant to the office, should be inquired into before passing judgment in a case in which such minor and his guardian may be concerned. *Chunder Madhub Chukurbuttee, Petitioner.* 22d March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 136.—Hawkins.

9. A mere compromise between parties, as alleged guardians of a minor, and a *Gumáshtah,* or agent, of the minor's father, cannot render the minor liable for their acts, there being no proof that they were legally appointed guardians. *Hookum Chund Beyhanee* v. *French and others.* 9th May 1848. S. D. A. Decis. Beng. 427.—Dick.

10. The Registrar of the Supreme Court, plaintiff in a suit, as guardian of a minor (a Muhammadan female), was nonsuited, as not legally authorised to act in her behalf.[1] *Bibi Ushruf-oon-Nissa* v. *Registrar of the Supreme Court.* 20th Sept. 1848. 7 S. D. A. Rep. 559.—Dick, Jackson, & Hawkins.

2. *Right of Guardianship.*

11. Semble, an elder brother, though not appointed under Reg. I. of 1800, is competent to assume the guardianship of his younger brother, when the mother has become a religious recluse. *Ishwur Chundur Surma* v. *Brojonath Surma Chowdhree.* 9th Sept. 1850. S. D. A. Decis. Beng. 471.—Dick & Dunbar.

3. *Liability of Guardian.*

12. A decree for damages for libel against *A*, who alleged himself to be the guardian of *B* and *C*, was held by the Sudder Dewanny Adawlut to be personal; and it was held that he was not, as such guardian, exempted from liability, nor could the estate of *B* and *C* be sold in execution of the decree, though it might appear that the libellous charge, if proved, would have been productive of benefit to them. *Gooroo Das Ray, Petitioner.* 29th Jan. 1839. 1 S. D. A. Sum. Cases, Pt. i. 16.—Braddon & Reid.

[1] The Registrar sued as administrator to the estate, and guardian of the minor. The Court were of opinion that, under Sec. 3. of Reg. V. of 1799, he could not institute a suit on account of the minor without special appointment as guardian, or being so according to the Muhammadan law. Under that law, in default of those paternal relations who, by blood, are authorised to act as guardians to minors, the ruling power is the guardian.

13. A ward of the Court of Wards has, under Sec. 36. of Reg. X. of 1793, legal redress against the guardian, manager, and collector appointed by the Court of Wards, and has his remedy for mismanagement, neglects, or omissions on their part as fully as any other minor with duly appointed guardians. *Rajah Kishennath Raee* v. *Ram Lal Mookerjea and others.* 1st Sept. 1847. S. D. A. Decis. Beng. 506.—Dick.

GUMÁSHTAH.—See AGENT, *passim.*

GURU.—See RELIGIOUS ENDOWMENT, 16.

HABEAS CORPUS.

1. When an infant (the son of a Hindú), supposed to be improperly in custody, is brought up on *Habeas Corpus*, the Supreme Court will (if he appear to be capable of exercising a sound discretion and judgment) allow him to depart wherever he lists; minority simply not entitling a father to the custody of his child.[1] *The Queen* v. *Ogilvie.* 8th July 1847. Taylor, 137.

2. An alien prisoner of war cannot claim a writ of *Habeas Corpus* as of right. *In the matter of the Maharanee of Lahore.* 5th Dec. 1848. Taylor, 428.

3. The English law relating to personal liberty extends, in the *Mofussil*, to *British* subjects only. *Ibid.*

HAKK.—See DUES AND DUTIES, 1.

HÁT.—See ACTION, 47. 125. DUES AND DUTIES, 2.

HAZÁRÍBÁGH.—See ACTION, 70. ASSESSMENT, 52. CRIMINAL LAW, 38.

HIBEH BIL-IWAZ.—See GIFT, 7, 8.

HIBEH NÁMEH.—See GIFT, 1. LIMITATION, 8.

[1] In this case the Court observed—"It appears to us, on the authorities, that we must leave him (the infant) in the state of actual freedom in which our writ found him, and that all we can do is to tell him we do not decide adversely to the father's right to the possession of his person, and the custody and care of him, but that he may now elect to go to the place whence he came, or to his father's house. As the circumstances are not fully before us, we cannot say positively that the father's right is not in any way abridged, but nothing is shewn to us to lead us to the conclusion that it has suffered any diminution." Mr. Clarke, in the argument in this case, referred to *Brejonath Bose's* case, which has not been reported, and which was heard eight or ten years previously before Ryan, C. J. and Grant and Malkin, Js. The boy in that case was admitted to be past fourteen years old, and he had voluntarily gone to the Missionaries. He protested against being delivered up to his family, and declared he was a Christian, and that his family would kill him. He clung to the table of the Court-house and screamed violently; but the Court decided that they were precluded from interfering with the rights of a Hindú father, and desired the latter to remove him, which was effected, after considerable resistance by the son, in the presence of the Court. In the present case, however, the Court held that their decision must be governed by the case of *The King* v. *Greenhill* (4 A. & E. 624; 6 N. M. 244. 1836); and remarked, in reference to that case—"It is later, in fact, than the case decided in this Court; and, on the construction of the writ of *Habeas Corpus* we are bound to follow the decisions of the Courts of England in preference to any of this Court; if there were indeed any conflict between them. The case in this Court seems to have been decided in a great degree on its special circumstances, and we cannot collect from it that the learned Judges who decided it meant to say that minority simply was the only test."

HINDÚ WIDOW.

I. Rights, Powers, and Liability, 1.
1. *Generally*, 1.
2. *Alienation by*, 6.
3. *Debts*, 17.
4. *Gift by.—See* Gift, 4.
5. *Right to Adopt.*—See Adoption, 2.
II. Succession of.—See Inheritance, 6 *et seq.*
III. Maintenance of.—See Maintenance *passim*.

I. Rights, Powers, and Liability.

1. *Generally.*

1. The husband of a Hindú widow, a minor, by will bequeathed his whole property to her to be held in trust for a son, whom, on her attaining her majority, she was to adopt under the written authority of her husband: the will further provided that the mother of the testator should be the guardian of his widow during her minority, and see to the performance of the conditions and requirements of the will. The Court held, that the widow was, if she pleased, entitled to reside with her own father, in preference to living with the mother of her deceased husband.[1] *Kashee Chunder Mustofee, Petitioner.* 28th Jan. 1837. 1 S. D. A. Sum. Cases, Pt. i. 13.—Braddon & Hutchinson. (Money dissent.)[2]

2. Where a Hindú widow never actually alienated her right to a share in her husband's estate, but never registered her name as proprietor, requisite under the law, and never interfered or objected to the sole management and possession of her husband's brother, even to the extent of mortgaging the property as security, and to alienating portions of it permanently, especially the estate in question, which was sold in the most open and public manner, and possession given, and mutations in the Government registers duly made, and she herself proved to have witnessed the deeds; it was held that her right to the property so alienated could not be admitted. *Bhagúruttee Dibeeah* v. *Ranee Indur Ranee and others.* 15th Sept. 1845. S. D. A. Decis. Beng. 296.—Dick.

3. It was held, that, according to the law as current in Bengal, a widow, having a power from her husband to adopt a son, cannot sue as heir in her own right for a share of the ancestral estate.[3] *Beejayah*

[1] The question put by Mr. Braddon to the *Pandit* was as follows—"A Hindú widow, who is a minor, and, during her husband's lifetime, had never gone to his house, but who has received authority from him to adopt a son on attaining her majority, is unwilling to go to the family dwelling of her husband, now occupied by his brother. According to the Hindú law, as current in Bengal, can she be compelled to go?" The *Pandit* replied, that if there was a husband's brother, or such near male relation of the husband residing in his dwelling, who could give protection to the widow, she ought to go to her husband's house. But that if not, she was not required to leave the protection of her father's house. It does not appear on the face of the report that there was such brother, although the case is so put in Mr. Braddon's question.

[2] Mr. Money was for compelling the widow to reside with her husband's mother, with reference to the terms of the will.

[3] This decision was founded on that in *Ranee Kishenmunee* v. *Rajah Oodwunt Singh*, 3 S. D. A. Rep. 228, on which latter case the Court, in their judgment in *Bamun Das Mookerjee* v. *Mt. Tarnee Dibbeah*, S. D. A. Decis. 1850, p. 533, remarked as follows—"The point in that suit was whether a *retrospective* right could be claimed by a son *after he had been adopted*, so as to bar a sale made by his adoptive mother, previous to his adoption, to the injury of the rights, at that time contingent and eventual, but which actually accrued to him upon his adoption. In that case, the son, *when adopted*, became an undoubted heir; and it was of course the correct doctrine that no sale, made by a widow, who possesses only a very restricted life-interest in an estate, could have been good against an ultimate heir, whether an adopted son or otherwise, unless made under circumstances of strict necessity. There was, too, a peculiarity in that case, that it was held by the *Pandits*

Dibah Chowdhrain and another v. *Shama Soondree Dibah Chowdhrain.* 10th Aug. 1848. S. D. A. Decis. Beng. 762.—Tucker & Hawkins.

4. But it was afterwards held, that, according to the law of Bengal, the personal right of a widow vested in her is not superseded or destroyed by the fact of her holding permission from her husband to adopt a son; and that, therefore, until an adoption is actually made, her suit for her personal right as widow will lie, although she mentions in her plaint that she has authority from her husband to make an adoption. *Annapurna Dasi, Petitioner.* 18th June 1849. 2 Sev. Cases, 503.—Jackson. *Bamun Das Mookerjee and others* v. *Mt. Tarnee Dibbeah.* 30th Sept. 1850. S. D. A. Decis. Beng. 533.—Barlow, Colvin, & Dunbar.

5. A Hindú widow, resting her claim in her original suit to possession of her husband's property entirely on proof of an alleged *Anumatí Patra* given by her husband, in which her right as widow was declared, cannot be allowed to shift her case to an assertion of her general claim as widow, independently of any proof of the *Anumatí Patra. Juggodessury Dibeah* v. *Kalee Chundur and others.* 24th Dec. 1849. S. D. A. Decis. Beng. 483.—Barlow, Colvin, & Dunbar.

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2. *Alienation by.*

6. A widow cannot sell a portion of her late husband's property during the minority of her son, to enable her to prosecute a suit for the whole. *Roop Churn Das* v *Hurpurshaud Paul and others.* 9th April 1845. S. D. A. Decis. Beng. 106.—Reid, Dick, & Gordon.

7. A widow, mother of a minor adopted son, gave, by deed, property left by her late husband, as a security for money borrowed by her to liquidate a debt contracted by him, and to save from sale property of the minor, left by her husband, and pledged in security for that debt. Held, that the deed granted by the widow was valid and justifiable. *Goona Munee Dibeeah and others* v. *Bhugwuttee Dasee and others.* 18th Sept. 1845. S. D. A. Decis. Beng. 299.—Dick.

8. *A*, a Hindú widow, sued for possession of an estate, and obtained a decree in her favour for a share of it, with a reservation that she was to have only a life interest in such share, without authority to sell any portion of it: the remainder of her claim being dismissed, she had to pay costs on that portion. *A*, wanting money, partly for the purpose of paying these costs and partly for her own use, sold the share to *B*. *B* never got possession of the share, and sued *C* and *D*, *A*'s heirs, for the return of the purchase-money, understanding that *A* was not empowered to sell the estate. The Court held, that the necessity of borrowing money on the part of *A* was made out only so far as the costs of the former suit and a sum for her maintenance; and that, as she borrowed a larger sum than was required, the sale was invalid, and the purchase-money became a debt due from *A*; but they considered *B*'s claim to be good against *C* and *D* only for that portion of the debt incurred by *A* for the benefit of the estate and for her own maintenance, and decreed such portion accordingly, with interest. *Mt. Wuzeerun* v. *Rugobind Rai and another.* 11th Feb. 1846. S. D. A. Decis. Beng. 46.—Reid, Dick, & Jackson.

that, by the terms of the will of her deceased husband, the widow was only an 'appointed manager' of the estate, and that 'the right of property vested in the son subsequently adopted, from the time of the *Rajah's* death, and the adopting widow had no authority, *but that of intermediate management under her late husband's will.*' The case, then, stands by itself, and affords no general precedent, although, even if it did, it would relate only to the rights claimable by an adopted son, after adoption made." And see *infra*, Tit. INHERITANCE, Pl. 4, and note.

9. A Hindú widow can alienate lands by sale to pay her husband's debts, without the consent of the other heirs;[1] and such sale, even without possession, is valid.[2] *Mt. Oma Chowdrain* v. *Indurmunee Chowdrain and others.* 15th July 1847. 7 S. D. A. Rep. 354.—Court at large.

10. Where a Hindú widow in Bengal had sold her late husband's property, in which she only had a life interest; it was held, that such sale was illegal, and that, as she had shewn her readiness to injure the eventual heirs of the estate by selling it, there was no safety in putting her into possession; and it was therefore ordered that the plaintiff (the next heir) should be put in possession, on condition of paying over to the widow, during her lifetime, all the net profits from the estate. *Mungul Munnee* v. *Ram Doolub Das.* 12th Sept. 1848. S. D. A. Decis. Beng. 813.—Dick.

11. The life interest of a Hindú widow in Bengal in an estate left by her husband is not, adversely to a claim by the heirs of her husband, capable of transfer by her own assignment, or by seizure for her debts, independently of the necessities of her maintenance, or of the performance of any duty in regard to her husband, as of acts designed for his spiritual benefit, or of the payment of his debts.[3] *Kalleekaunt Lahooree* v. *Goluck Chundur Chowdhree.* 30th Oct. 1849. S. D. A. Decis. Beng. 405.— Barlow, Colvin, & Dunbar.

12. By the law as current in the South, a widow of a divided brother takes a life interest in the immoveable property of her deceased husband; but she cannot dispose of it except with the consent of his heirs, or from pressing want to perform his funeral ceremonies. *Ramasashien* v. *Akyalandummal.* 22d Nov. 1849. S. A. Decis. Mad. 115. — Hooper & Thompson.

13. But she may dispose of his moveable property. *Ibid.*

14. By the law as current in the South, a widow, in a divided Hindú family, has no power to alienate the immoveable property inherited by her from her husband, except a small portion thereof for religious purposes; but she has absolute authority over the personal or moveable property inherited by her from her husband, to consume or dispose of it at her pleasure.[4] *Gopaulla Putter and another* v. *Narraina Putter and others.* 28th Sept. 1850. S. A. Decis. Mad. 74.—Hooper & Morehead.

15. One of two widows, who had succeeded to their late husband's landed property in separate possession, made over her share, by deed of gift, to her husband's illegitimate son, who, on her death, sued the surviving widow for the share of the donor. Held, that he had no claim, as the widow had no power to alienate the property, except for the performance of funeral rites, or for her own subsistence.[5] *Gunput Singh*

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[1] 1 Coleb. Dig. 315, 316.

[2] 2 Coleb. Dig. 317, 318.

[3] See Vol. II. of this work, pp. 154, 155. 198—219. Eberling, 74. 1 Str. H. L. 246. Macn. Cons. H. L. 116. And see Vol. I. of this work, pp. 281, 282, Pl. 11 *et seq.* and notes, p. 260, Pl. 6 *et seq.* and notes.

[4] In this case the property was left to the widow by the will of her husband. According to the *Mitákshará*, moveable property, acquired by inheritance by a widow, is her private property, c. ii. s. xi. 2. And the same appears to be the case according to the *Mádhavíya*, 2 Str. H. L. 408. The *Vivâda Ratnákara* and the *Vivâda Chintámaní* uphold the same power of the widow. But by the law of Bengal she has only an usufructuary interest in the moveables as well as the immoveables. Dáya Bh. c. xi. s. i. Macn. Cons. H. L. 93. And see, as to the difference between the various schools on this subject, Vol. I. of this work, Tit. Gift, Pl. 75; Hindú Widow, Pl. 17, 18; Inheritance, Pl. 51—55, and the notes appended thereto.

[5] 2 Macn. Princ. H. L. 211. 2 S. D. A. Rep. 32. 167. 4 Ditto, 143. And see the

v. *Mt. Ranee Chouhan.* 29th July 1850. 5 Decis. N. W. P. 202.—Begbie, Deane, & Brown.

16. The division by a widow of her property *ad libitum* among some of her sons, who were on good terms with her, to the exclusion of another son, who had quarrelled with her, was held to be good as to the personal property, and the yearly produce of the real estate, but not as to the immoveable property, which she cannot alienate by sale, gift, or otherwise, and which, at her decease, must descend to her sons in equal proportions. *Gooroobuksh Ram Misrayer* v. *Sowcar Lutchmana Prasad Misrayer.* 29th Aug. 1850. S. A. Decis. Mad. 61. — Thompson & Morehead.

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3. *Debts.*

17. Expenses incurred by a widow of a Hindú for the marriage of a daughter are recoverable from his estate. *Preaj Nurain* v. *Ajodhyapurshad and others.* 21st June 1848. 7 S. D. A. Rep. 513.—Tucker, Barlow, & Hawkins.

18. The defendant adopted the plaintiff when he was a child. During his minority, his adoptive mother, the defendant, squandered away her late husband's property, and contracted debts. Afterwards she refused to render an account to him as to her management of the property in question. Held, that as an adopted son was, by the Hindú Law, liable for the *boná fide* debts of his adoptive mother, she was bound to render to him an account of her late husband's property, or pay the damages claimed. *Nurhur Shamrao* v. *Yeshodabaee Kome Shamrow Govind and another.* 23d March 1847. Bellasis, 65.—Bell, Simson, & Le Geyt.

placita, No. 13 *et seq.* Tit. Hindú Widow, Vol. I. of this work, p. 281 *et seq.* and the notes appended thereto.

HOMICIDE.

I. Culpable Homicide. — See Criminal Law, 18 *et seq;* 75. 108 *et seq.*

II. Erroneous Homicide. — See Criminal Law, 160.

HUK.—See Dues and Duties, 1.

HUSBAND AND WIFE.

I. Hindú Law, 1.
II. Muhammadan Law, 4.
III. In the Courts of the Honourable Company, 6.

I. Hindú Law.

1. Held, that by the usage and custom of the Lewa Koonbí cast, a woman cannot, under any circumstances, obtain a divorce from her husband without his consent. *Dyaram Doolubh* v. *Baee Umba.* 23d March 1843. Bellasis, 36.—Bell, Pyne, & Hutt.

2. According to the Hindú Law, a marriage once solemnized by the ceremonies of *Waydan* and *Saptápadí* can never be set aside, although the marriage may have been irregularly contracted by the mother of the girl without the consent of the father. *Baee Rulyat and others* v. *Jeychund Kewul.* 8th August 1843. Bellasis, 43.—Pyne, Simson, & Hutt.

3. *A*, the step-father of *B*, married *B* to *C*, and gave *C* a dower. *B* died, and *C* wished to contract a second marriage. Held, that *A*, by the Shastras, can make no demand for restitution of the dower given by him to *C*, nor prohibit her from contracting a second marriage. *Baee Rutton* v. *Lalla Munnohur.* 4th March 1848. Bellasis 86.—Bell, Simson, & Le Geyt.

II. Muhammadan Law.

4. An alleged settlement of a

man's property, made subsequent to a settlement of dower, and asserted to have been made with the consent of his wife shortly before her death, she receiving a share of such property under the second settlement, in lieu of dower, was held not to vitiate the *Mahr námeh* in possession of her daughters, nor to bar their claim against their father for their share of their mother's dower, as the conditions of the second settlement were not proved to have been fulfilled. *Meer Futteh Allee* v. *Ilahee Begum and another*. 27th Aug. 1846. 1 Decis. N. W. P. 128.—Cartwright.

5. A wife cannot claim the whole of her dower as *exigible* while her husband is alive, where no specific amount has been expressly declared to be exigible. In such cases, one-third of the whole must be considered exigible (*Maujjil*), and two-thirds not exigible (*Muwajjal*), such two-thirds being only claimable on the death of her husband. *Muriam-oon-Nissa Begum* v. *Imdadee Begum*. 1st June 1848. 3 Decis. N. W. P. 185.—Thompson.

III. In the Courts of the Honourable Company.

6. An action brought by a husband against his wife for refusing to live with him, should be instituted in the Zillah where her home is, and not where the marriage took place. *Ubdool Mujeed, Petitioner*. 17th March 1846. 1 S. D. A. Sum. Cases, Pt. ii. 78.—Reid.

7. Among Christians, the husband and wife are one; and unless there be specific evidence to the contrary, property belonging to either must be assumed to belong to both. *Lucas* v. *Beebee Despino Kallonas and others*. 30th March 1847. S. D. A. Decis. Beng. 93.—Dick.

8. A marriage settlement contained a declaration on the part of the husband, that, in lieu of one-third of the amount settled, he made over certain lands and other property, and an engagement to pay the remainder at his convenience. The wife died, and her brother, becoming entitled by inheritance to two-fifteenths of the property left by her, sued the husband and mother of the deceased for the same. Held, that as the deceased never obtained possession of the lands mentioned in the settlement, the brother was entitled to two-fifteenths of the amount of the marriage settlement in money. *Zenooddeen and another* v. *Sheikh Ahmud Ali*. 31st Aug. 1847. S. D. A. Decis. Beng. 491.—Jackson.

9. In a suit by a wife against her husband (both Armenian Christians) for property acquired by the former previous to her marriage, an ante-nuptial contract on the part of the husband, in reservation of his wife's independent authority over the property, was made the basis of the judgment in her favour; and the English law was held to be inapplicable to the case.[1] *Aratoon Hara-*

[1] This case was decided, it will be observed, not according to any supposed Armenian law, or any usage prevailing amongst the Armenians in India, but solely on the terms of the ante-nuptial contract. The English law was held not to apply to the case, as there is no express authority for Armenians for considering such law to be the *lex loci*, and moreover the practice of the Company's Courts is directly opposed to it. See *Beglar* v. *Dishkoon*, 1 Sev. Cases, 159; and 7 S. D. A. Rep. 72. Mr. Jackson, in his judgment in the above case of the *Aratoons*, remarked—"From the precedents, it appears to have been the practice of this Court to refer to Armenian priests for an exposition of their usages; but this practice is open to many objections. I know of no reason for referring to priests as expounders of civil law. Among the Mahomedans and Hindoos, the ritual and civil law are so mixed together as to be undistinguishable, and the priests are consequently the persons most able to explain either. But this is not the case with Christians: with them religion is altogether independent of civil law; and I see no reason for placing Armenian Christians in civil matters under the authority of their priests, who are probably as unfit to decide a question of civil law as those of our own Protestant church. Indeed, many

piet Aratoon v. *Catherina Aratoon.* 17th Aug. 1848. 7 S. D. A. Rep. 528.—Jackson.

10. In an action brought to recover money due on a shop bill for goods purchased by the defendant's wife, the plaintiff and defendant both being Christians; it was held, that the plaintiff brought the suit rightly against the husband alone, and that it was unnecessary to sue the wife separately.[1] *Agabeg* v. *Jones.* 28th Aug. 1849. 4 Decis. N. W. P. 295.—Thompson.

HUWALADÁR. — See ACTION, 9; ASSESSMENT, 36.

IKRÁR.—See EVIDENCE, 105.

IKRÁR NÁMEH.—See ACTION, 104. 118; COMPROMISE, 4; DEED, 11; EVIDENCE, 127; INHERITANCE, 19.

ILLEGAL IMPRISONMENT. —See CRIMINAL LAW, 39.

ILLEGITIMATE CHILDREN. —See BASTARD, 1, 2; INHERITANCE, 5. 30.

of the Armenian priests, on a requisition from this Court, refused to give an opinion on a point of this description, alleging not only that they were priests, and not jurists, but that it was contrary to the principles of their religion, and to the practice of their priesthood, to meddle with temporal concerns." For some account of the uncertain state of the Armenian law, see Vol. I. of this work, Introduction, p. ccxcviii.

[1] The Court observed, that though the parties in this case were Christians, it by no means followed that their case was to be adjudged according to the English law; and the decision was passed, not as according to that law, but, under Sec. 9. of Reg. VII. of 1832, as being conformable to "the principles of justice, equity, and good conscience."

INAÁM.

1. An *Inaám,* without conditions, is liable for debts due by a former possessor. *Venajkrow Narrayen and others* v. *Purushram and another.* 27th Nov. 1846. Bellasis, 61.—Bell, Hutt, & Grant.

2. An *Inaám Izáfat* village, held by any hereditary district or village officer, was held to be a service *Watan* of the nature contemplated in Sec. 20. of Reg. XVI. of 1827. *Wittul Sucaram* v. *Bhageerthee Baee.* 27th Nov. 1846. Bellasis, 63.—Bell, Hutt, & Grant.

INCREASE OF RENT. — See ASSESSMENT, 27 *et seq.*

INDICTMENT. — See CRIMINAL LAW, 40 *et seq.*

INDORSEMENT. — See BILLS AND NOTES, *passim.*

INFANT.

I. HINDÚ LAW, 1.
II. IN THE SUPREME COURTS, 3.
III. IN THE COURTS OF THE HONOURABLE COMPANY, 4.
1. *Generally,* 4.
2. *Majority,* 8.
3. *Effect of Minority in Criminal Cases.—See* CRIMINAL LAW, 201.
4. *Action against.—See* ACTION, 4. 7; PRACTICE, 110.
5. *Action by.—See* ACTION, 73.
6. *Limitation as regards Infants.— See* LIMITATION, 76 *et seq.*

INFANT.

I. HINDÚ LAW.

1. One of the parties to a deed being a Hindú minor, the deed was

held to be invalid. *Mt. Pudawutee Dibeeah and another* v. *Kishoon Mohun Banoorjeeah and others.* 26th Jan. 1847. S. D. A. Decis. Beng. 25.—Dick.

2. A Hindú minor executing a joint bond was held to be exempt from all liability under the bond. *Yerlagudda Ramasawmy* v. *Guddum Lukshmanna.* 2d July 1849. S. A. Decis. Mad. 6.—Thompson & Morehead.

II. In the Supreme Courts.

3. A child of the tender age of three years cannot be constituted, nor considered to be, nor can he hold himself out, as a partner in a trading firm, so as to be enabled to sue in respect of contracts entered into with the firm, nor can the adult members join him as a party suing on record. *Petumdoss and another* v. *Ramdhone Doss and others.* 27th Jan. 1848. Taylor, 279.

III. In the Courts of the Honourable Company.

1. *Generally.*

4. The estate of a minor, a ward of Court, is not liable for money borrowed by his mother on his account, even though with the consent of his guardian.[1] *Hur Kishwur Chowdree* v. *Ram Doolal Lushkur.* 21st Aug. 1845. S. D. A. Decis. Beng. 279.—Reid, Dick, & Barlow.

5. A mere compromise between parties, as alleged guardians of a minor, and a *Gumáshtah,* or agent, of the minor's father, cannot render the minor liable for their acts, there being no proof that they were legally appointed guardians. *Hookum Chund Beyhanee* v. *French and others.* 9th May 1848. S. D. A. Decis. Beng. 427.—Dick.

6. A minor, in whose name a suit has been defended by his guardian, coming of age *pendente lite,* the decision is not thereby rendered void. *Hurchurn Sookul* v. *Gunga Purshad and another.* 19th June 1848. S. D. A. Decis. Beng. 551.—Rattray & Jackson.

7. The defendant, a minor, executed a bond for money lent, bearing his seal, and also the signature of the Agent to the Governor-General, and, after attaining his majority, paid certain money in part liquidation of the sum lent. On a suit for the recovery of the balance, the defendant pleaded the invalidity of the bond, in consequence of his minority at the time it was executed. Held, that the Agent must be looked on as the guardian of the defendant at the time the money was borrowed; and as there was no doubt that the defendant absolutely received the money, and applied it to his own use, and had made payments after attaining his majority, that the bond was binding against him. *Nuwab Syud Asadoollah Khan* v. *Sumerchund Duka Muhajun.* 28th June 1848. S. D. A. Decis. Beng. 595.—Dick, Jackson, & Hawkins.

2. *Majority.*

8. If a minor be under the tutelage of a guardian appointed by the Court of Wards, his minority is considered to have terminated at the date when such guardian shall be removed by that Court. *Mehronissa* v. *Rajubonissa.* 5th July 1848. S. D. A. Decis. Beng. 644. —Dick, Jackson, & Hawkins.

9. The evidence as to the age of a party alleging minority not leading to any certain conclusion, the presumption is in favour of minority. *Joy Chundro Raee* v. *Bhyrub Chun-*

[1] Under Sec. 10. of Reg. X. of 1810, even a manager is prohibited from paying any debt, although adjudged, previous to giving intimation to the Collector, who, too, must first report the same to the Court of Wards, and obtain their sanction for its liquidation.

dro Raee and another. 18th Dec. 1849. S. D. A. Decis. Beng. 461. —Barlow, Colvin, & Dunbar.

INFANTICIDE.—See CRIMINAL LAW, 141 *et seq.*

INFORMER.— See CRIMINAL LAW, 145.

INHABITANCY.—See JURISDICTION, 1, 2. 71 *et seq.*

INHERITANCE.

I. HINDÚ LAW, 1.

1. *Of Sons and Grandsons*, 1.
2. *Of Adopted Sons*, 4.
3. *Of Illegitimates*, 5.
4. *Of Widows*, 6.
5. *Of Daughters*, 9.
6. *Of Parents*, 10.
7. *Of Sisters and their Sons*, 11.
8. *Of other Heirs*, 13.
9. *By Custom*, 16.
10. *To Offices*, 25.
11. *Exclusion from Inheritance*, 26.

II. MUHAMMADAN LAW, 29.

1. *Generally*, 29.
2. *Of Illegitimates*, 30.
3. *Of Sisters*, 31.
4. *By Custom*, 32.

III. JÁT LAW, 34.

I. HINDÚ LAW.

1. *Of Sons and Grandsons.*

1. *A*, *B*, and *C* were the grandsons of three full brothers, *A* being proprietor of the property in dispute. *A* died 60 years before the institution of the suit, leaving a widow, but no son. The widow survived *B* and his son, and *C* and his son, but *C* left grandsons who survived the widow of *A*, and claimed the estate of *A* as the heirs of his widow. It appeared that on the death of *A*, *B* took possession of the disputed lands as heir, and allowed maintenance to *A*'s widow. On *B*'s death, his widow sold the lands to *D*, who had married *B*'s daughter. Held, that as *A*'s widow survived *B* and his son, she was *A*'s legal heir, and that the grandsons of *C* were the rightful heirs since the widow's death. The sale and purchase from *B*'s widow by *D* were held to be fraudulent and void, as effected in bad faith, since, *D* being her heir, there would have been no necessity for a sale, had it not been known to her and the purchaser that she had no right to the lands. *Gunga Ram Dass and others* v. *Mt. Kishoree Dossee and others.* 20th Feb. 1845. S. D. A. Decis. Beng. 28.—Reid, Dick, & Gordon.

2. A mother having succeeded her son in the inheritance of ancestral property; on her death her son's heirs succeed in preference to her own.[1] *Rughobur Suhaee* v. *Mt. Tulashee Kowur and others.* 22d March 1847. S. D. A. Decis. Beng. 87. —Rattray, Dick, & Jackson.

3. A Hindú died, leaving a widow *E*, and four sons, *A*, *B*, *C*, the plaintiff, and *D*, who entered upon joint possession of the patrimony. *B* died, leaving a widow, who was supported by *C*, the plaintiff, he obtaining possession of *B*'s share for rendering such support. *D* died, leaving neither wife nor child, and consequently *E*, his mother, who was still alive, inherited his quarter share, which she divided equally between her remaining sons *A* and *C*, not making over to them the proprietary right, but merely in trust, on condi-

[1] The same point was decided in the case of *Mt. Bijya Dibeh* v. *Mt. Unpoorna Dibeh.* 1 S. D. A. Rep. 162. See Vol. I. of this work Tit. INHERITANCE, Pl. 130 and note.

tion that they should support her. *A* died before his mother, leaving a widow, the defendant, and two daughters, neither of whom had any children. Finally, the mother died, having survived all her sons, except the plaintiff, *C*, who claimed the fourth share which devolved on his mother on the death of *D*. Held, that *C* was entitled to such fourth share as heir to his mother, in preference to the widows and daughters of *A*. *Rajchunder Dutt* v. *Bugwuttee Dassea and another*. 19th May 1847. S. D A. Decis. Beng. 155. — Dick, Jackson, & Hawkins.

2. *Of Adopted Sons.*

4. The right of inheritance in an adopted son vests in him from the time of his adoption only.[1] *Bamun Das Mookerjee and others* v. *Mt. Tarnee Dibbeah*. 30th Sept. 1850. S. D. A. Decis. Beng. 533.—Barlow, Colvin, & Dunbar.

3. *Of Illegitimates.*

5. There being two sons of a Hindú by a concubine, and a grand-nephew, such Hindú and his brother being both illegitimate, the two sons inherit their deceased father's property to the exclusion of the grand-nephew. *Chendrabhan* v. *Chingooram and another*. 30th Aug. 1849. S. A. Decis. Mad. 50.—Thompson.

4. *Of Widows.*

6. A Hindú widow does not forfeit her right to succession by removing from the family dwelling-house of her deceased husband.[2] *Oma Debea and others* v. *Sheeb Pershad Lahuree*. 29th July 1846. 7. S. D. A. Rep. 270.—Reid, Dick, & Jackson.

7. By the law of Mithila, if separation has taken place between the hereditary proprietors of an estate, the widows of the late proprietor will succeed: if the estate was held in joint occupancy, the next male heirs inherit. *Baboo Nundlal Burm'h and others* v. *Mt. Neela Buttee and another*. 16th Aug. 1847. S. D. A. Decis. Beng. 442. — Rattray, Dick, & Jackson.

8. Under the Mithila law, a widow is not entitled to succeed to her husband's share in a joint undivided estate.[3] *Deendial and others* v. *Mt. Sujjun Koonwar*. 25th Aug. 1847. 2 Decis. N. W. P. 297.—Tayler, Begbie, & Lushington.

5. *Of Daughters.*

9. By the Hindú law, prostitute daughters, living with their prostitute mother, succeed to their mother's property, in preference to a married daughter living with her husband. *Tara Munee Dossea* v. *Motee Buneanee and another*. 30th July

[1] See Dáya Bh. c. i. s. 45. c. vii. ss. 11, 12. Dája Cr. San. c. v. ss. 21—24. 1 Macn. Princ. H. L. 2. 2 Str. H. L. 127. 3 Moore Ind. App. 243. Vol. II. of this work, p. 18. The cases bearing upon this point are, *Ranee Kishenmunee* v. *Rajah Oodwunt Singh*. 3 S. D. A. Rep. 228. *Mt. Solukhna* v. *Ramdolal Pande*. 1 S. D. A. Rep. 324. *Pran Nath Rai* v. *Rajah Govind Chandra Rai*. 5 S. D. A. Rep. 37. *Karuna Mai* v. *Jai Chandra Ghos*. 5 S. D. A. Rep. 42. *Kishn Lochan Bose* v. *Tarini Dasi*. 5 S. D. A. Rep. 55. *Adaitachand Mandal and others, Petitioners*. 2 Sev. Cases, 131. *Lakhi Priya* v. *Bhairab Chandra Chandhuri*. 5 S. D. A. Rep. 315. *Mt. Himulta Chowdrayn* v. *Mt. Puddoo Munee Chowdrayn*. 4 S. D. A. Rep. 19. *Mt. Subudra Chowdryn* v. *Goluknath Chowdry*. 7 S. D. A. Rep. 143. And see *supra*, Tit. Hindú Widow, Pl. 3, 4.

[2] The decision in this case was founded on the judgment of the Privy Council in *Cossinauth Bysack* v. *Hurosoondery Dossee*. See Vol. I. of this work, p. 280, Tit. Hindú Widow, Pl. 4, and the note appended thereto.

[3] Mit. c. ii. s. i. 7. 19. 1 Macn. Princ. H. L. 19. 2 Do. 21.

1846. 7 S. D. A. Rep. 273. — Dick.

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6. *Of Parents.*

10. A claim by adoption having been adjusted between the claimant and the heirs at law of the alleged adoptive father by a partition of the estate of the latter; it was held, that on the death of the claimant the heirs succeed to his estate in preference to his own mother. *Radha Madhub Rae, Petitioner.*—21st June 1847. 1 S. D. A. Sum. Cases, Pt. ii. 105. —Hawkins.

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7. *Of Sisters and their Sons.*

11. Of several claimants, among whom were the sons of three paternal uncles of the deceased (an unmarried childless Hindú), his three sisters, a step-mother, and a sister-in-law, the Zillah Court, in conformity with the opinion of the Law Officer, awarded certificates, under Act XX. of 1841, to a sister who had produced male issue, as well as to the sister-in-law, whose husband had died seventeen months previous to the death of the deceased. This decree was reversed by the Sudder Dewanny Adawlut, on the appeal of the deceased's paternal uncles' sons (opposed by other claimants), and the award of the certificate to the sister alone who had borne heritable issue affirmed, after reference to the Pandit and the printed decisions of the Court; the right of the sister, as trustee for her heritable issue born before the death of his paternal uncles, as well as for the future production of such issue (though not born or begotten at the time of the death of the paternal uncles), being recognised by the law of Bengal. *Adaitachand Mandal and others, Petitioners.* 17th Aug. 1843. 2 Sev. Cases, 131.—Tucker, Reid, & Barlow.

12. According to the Hindú law, property derived by a mother from her son cannot be succeeded to by her daughter, the sister never being heir to the brother.[1] *Raj Koonwaree Kirpa Mayee Dibeeah* v. *Rajah Damoodhur Chunder Deyb and others.* 20th Feb. 1845. 7 S. D. A. Rep. 192.—Reid, Dick, and Gordon.

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8. *Of other Heirs.*

13. By the Hindú law of inheritance, the descendants by a second marriage can only succeed to property held by the descendants by a first marriage when all the latter are extinct. *Dinajee Bin Dhoolbhajee Patell* v. *Ramjee Bin Dyajee Patell.* 3d April 1841. Bellasis, 11.—Marriott, Bell, & Giberne.

14. According to the Mithila law of inheritance, the claims of paternal kindred who are *Sapindas*, which relation includes the descendants of a paternal ancestor in the sixth degree, are considered preferable in law to those of maternal kindred, cognates.[2] *Ranee Sreekaunth Deybee* v. *Sahib Perhlad Sein.* 9th Sept. 1846. S. D. A. Decis. Beng. 334.—Rattray, Tucker, & Barlow. *Chowtreea Run Murdun Sein* v. *Sahib Perhlad Sein.* 26th May 1847. 7 S. D. A. Rep. 292.—Rattray, Tucker, & Barlow.

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9. *By Custom.*

16. The *Kowur*, or second son of a Rájah, on the death of his eldest son *A*, the *Thákur*, made over the Pergunnah of Sonepor to *A*'s sons. *B*, the *Kowur's* younger son, sued to participate. Held, that the *Kowur's* eldest son, the *Thákur*, was entitled, agreeably to the family usage, to

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[1] With regard to the inheritance of sisters, see the note 3 at page 325 of the first volume of this Digest.

[2] And see the cases *Gungadutt Jha* v. *Sreenarain Rai*, 2 S. D. A. Rep. 11; and *Rutcheputty Dutt Jha* v. *Rajunder Narain Rae*, 2 Moore Ind. App. 132.

succeed to the *Gaddí* and to the entire estate, and *B*'s claim was dismissed. *Lala Indernath Sahee Deyoo* v. *Thakoor Casseenath Sahee and others.* 3d Feb. 1845. S. D. A. Decis. Beng. 17.—Barlow.

17. It is no bar to the division amongst heirs of an estate, the property of a Hindú family, that it previously belonged to another family, in which the custom had obtained that the whole estate should pass to the eldest son. *Gopal Das Sindh Maun Data Mahapater* v. *Nurotum Sindh and others.* 26th March 1845. 7 S. D. A. Rep. 195.—Reid, Dick, & Gordon.

18. In a suit for succession to a moiety of the estate of the Rájah of Tirhoot, the claim was dismissed, on the ground that the succession devolved upon the defendant in virtue of a deed executed in his favour by the late incumbent, such succession being in conformity with the long-established usage of the family, in which the title and estate had uniformly devolved entire for many generations.[1] *Muha Raj Kowur Basdeo Singh* v. *Muha Rajah Roodur Singh Buhadur.* 27th Feb. 1846. 7 S. D. A. Rep. 228.—Pringle.

19. Where, by the custom of a family, childless widows took no part of the inheritance, and an *Ikrár námeh*, executed by four brothers, who at the time owned the whole property, declaring the practice of the family as stated, was produced in evidence;[2] it was held, that such childless widows were excluded from the inheritance. *Russic Lal Bhunj and others* v. *Purush Munnee.* 9th June 1847. S. D. A. Decis. Beng. 205.—Dick & Jackson. (Hawkins dissent.)

20. Where it was proved that by the custom of a family the *Rajgí* descended by primogeniture, the succession of a brother was upheld, to the exclusion of the childless widow of the deceased holder of the *Ráj*, who claimed division of the estate, notwithstanding she had been actually admitted to a share in the collections, had paid the Government revenue, had had her name entered in the Collector's books as a sharer, and had sued a tenant of the estate for her share of the rent, and obtained a decree for it with the consent of the the defendant, the brother of her deceased husband.[3] *Ranee Hursoondree Dibbea* v. *Rajah Bishennath Singh.* 17th July 1847. S. D. A. Decis. Beng. 339.—Jackson.

21. The exclusive right of succession of an eldest son is limited to Regalities and ancient *Zamíndárís*, when the common Hindú law of inheritance gives place to the usage of the country, or the pleasure of Government. *Mootoovengadachellasamy Manigar* v. *Toombayasamy Manigar and others.* 23d July 1849. S. A. Decis. Mad. 27.—Thompson & Morehead.

22. The usage existing in Tinnevelly, which gives the right of succession to the eldest son, does not affect *Zamíndárís*, or *Mootahs*, acquired by recent purchase, it being

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[1] Menu, B. i. v. 108, B. vii. v. 41, 46; 1. Str. H. L. pp. 16. 256, 257.

[2] This same *Ikrár námeh* was produced in a former case, where a childless widow of another of the sharers claimed inheritance, and her claim was dismissed. In that case, which has not been reported, the *Pandit* gave a *Vyavashta*, declaring that a declaration of the joint heirs would have the effect of altering the succession so as to exclude childless widows, notwithstanding the general custom of the country of a contrary nature. In the present case the *Pandit* declared that the *Ikrár námeh* was of itself sufficient to establish the custom in dispute, and to set aside the usual law of inheritance. Mr. Hawkins differed from his brother Judges, not considering the custom, or the *Ikrár námeh*, to be proved by the evidence.

[3] It must be observed, that even if the brother voluntarily allowed the widow to get her name entered, and to hold partial possession, this could not be urged in favour of her claim, since he had no authority to convey to her any right to the prejudice of his own heirs.

only applicable to Regalities and ancient *Zamíndárís*. *Jagunnadharow* v. *Kondarow*. 22d Nov. 1849. S. A. Decis. Mad. 112.—Morehead.

23. The existence of a family usage, by which an estate descends to the eldest son of the proprietor, will not preclude an eldest son from being bound personally to his brothers, by admissions formally made to them, acknowledging their right to co-heirship along with himself. *Rajah Bishnath Singh* v. *Ram Churn Mujmoadar*. 16th Feb. 1850. S. D. A. Decis. Beng. 20.—Barlow, Colvin, & Dunbar.

24. But such admissions will not be valid against the eldest son, in favour of an alleged adopted son of one of his brothers, so as to bar inquiry on the pleas that there is also a family usage which precludes inheritance by adoption, and that the adoption, alleged to have been made, was otherwise not correct according to law. *Ibid.*

10. *To Offices.*

25. Any male representative of an undivided Hindú family, is entitled to the *Wywat*, or *office* of a *Watan*, in preference to a female. *Anpoornabaee Kome Bulwuntrow Deshmook* v. *Janrow Wullud Dewrow*. 15th Oct. 1847. Bellasis, 74. —Le Geyt.

25*a*. The *Stanigam Mírási* of a *Pagoda*, situate at Combaconum in Tanjore, was held not to be an hereditary office, according to Hindú usage. *Sashiengar* v. *Cotton and others*. 27th Sept. 1849. S. A. Decis. Mad. 64. — Thompson & Morehead.

11. *Exclusion from Inheritance.*

26. A Hindú died, leaving two widows, the next heirs being three brothers; one of the brothers died in the lifetime of the widows. Held, that his heirs were excluded on the death of the widows.[1] *Bhoop Nurain Sahoo and another* v. *Baboo Jobraj Singh and another*. 13th Jan. 1847. S. D. A. Decis. Beng. 8.—Rattray.

27. Where a Hindú had disinherited his son on the ground that he was his professed enemy, and afterwards restored his son to his confidence, and entrusted him with the management of his property, and, after his death, the son had performed his funeral obsequies; it was held, that the son was not thereby excluded from the inheritance.[2] *Mt. Jye Koonwur* v. *Bhikaree Singh and others*. 15th April 1848. S. D. A. Decis. Beng. 320.—Tucker, Barlow, & Hawkins.

28. *Quære*, whether, by the law of Mithila, a Hindú father has a right to disinherit his son under any circumstances. *Ibid.*

II. Muhammadan Law.

1. *Generally.*

29. An *Istimrárí* grant, with reversion to the descendants of the grantee in perpetuity, *Batarík-i-dawám Nuslun baad Nuslun*, is, under the Muhammadan law, an heritable and transferable property; and there is nothing in the words *Nuslun baad Nuslun* to exclude a

[1] See the case of *Laxmi Narayan Singh and another* v. *Tulsi Narayan Singh and others*. 5 S. D. A. Rep. 282.

[2] The fact of the disinheritance was not denied; but the Court, looking at the petitions of the father of Bhikaree Singh, filed in the Criminal Court, did not see in them any grounds justifying the son's disinheritance. The only ground set forth was, that the son was a professed enemy of his father; but the petitions above alluded to did not shew that he was such, in the light in which such a disqualifying circumstance is viewed by the Hindú law; for the subsequent pardon and restoration to confidence by the father, as well as the fact of the performance of the obsequies, were in evidence.

widow from the right of inheritance.[1] *Ranee Roop Koonwur* v. *Rao Nathooram and another.* 13th Aug. 1850. 5 Decis. N. W. P. 240.—Begbie, Deane, & Brown.

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2. *Of Illegitimates.*

30. The son of a Muhammadan by a slave girl, if acknowledged by his father, is entitled to inherit.[2] *Syud Mohummud Rezza and another* v. *Syud Inait Rezza.* [17th Jan. 1848. S. D. A. Decis. Beng. 18.—Rattray, Jackson, & Currie.

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3. *Of Sisters.*

31. Where there is only one sister by the same father and mother, the half-sisters, by the same father only, supposing them to have no uterine brother, take one-sixth as their legal shares.[3] *Aleem-o-Nissa* v. *Mt. Sittara Begum and others.* 23d Feb. 1848. S. D. A. Decis. Beng. 106. —Tucker.

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4. *By Custom.*

32. A Court of Law is not justified in disturbing a mode of succession to which long prescription has lent its sanction, according to the clearest possible testimony. *Mt. Begma Jan* v. *Mt. Doollun Beebee.* 20th May 1850. 5 Decis. N. W. P. 69. —Begbie, Deane, & Brown.

33. And where it appeared that a certain *Maafi* village had been held for a long period, under a grant from the Maharajah of Gwalior, by the original grantee and his lineal descendants, who were the *Pírmurshids* to the Maharajah, rather as a religious endowment, in which the grantee's descendants acted in turn as superintendents, than as a personal one; that on the death of the grantee, leaving male and female offspring, the ordinary rules of inheritance were set aside in favour of one son to the exclusion of the co-heirs; that the grant had not been at any period subjected to division; and that, on failure of the direct line, the defendant (a descendant of the original grantee in a collateral line) had been sent for, and installed in due form, as *Gaddí Nishín,* by the Gwalior Durbár; it was held, that a claim for a share of the estate by the plaintiff, as the principal heir of her son, who was the last incumbent, could not be maintained, although there was no proof whether any endowment was originally constituted, so as, *primâ facie,* to bar division of the estate amongst the heirs of the original grantee, according to the rules of Muhammadan Law. *Ibid.*

III. Ját Law.

34. There does not appear to be any particularity in the law of descent applicable to *Játs;* the ordinary Hindú law applying. *Dabee Singh and others* v. *Bujroo Singh and others.* 19th Sept. 1850. 5 Decis. N. W. P. 336.—Lushington.

INITIATORY CEREMONIES. —See Adoption, 8.

INJUNCTION.—See Practice, 21 *et seq.*

INSANITY.—See Criminal Law, 43 *et seq.*; 146 *et seq.*

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[1] This was the *Fatwa* of the law-officer, and the Court observed that they did not fully subscribe to the opinion of the absolute alienable character of the grant, but the point was not then before them: in other respects they accepted it. The widow inherited under the provisions of the Hindú law; and, as she had a life interest only, the Court remarked that her inheritance would therefore rank as an incident in the lineal succession, and the recognition of the right by the Courts would not have the effect alleged by the respondents of diverting the descent of the tenure from the channel marked out in the grant. And see *supra,* Tit. Grant, Pl. 8.

[2] Macn. Princ. M. L. p. 85.

[3] Macn. Princ. M. L. 5.

INSOLVENT.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 3.

I. IN THE SUPREME COURTS.

1. Under the 35th Section of the Indian Insolvent Act, notice to creditors is not a condition precedent to the discharge of an insolvent. *Stevens* v. *Gilmore and others.* 13th Aug. 1849. 1 Taylor & Bell, 75.

2. An assignee of an insolvent ought not, without the leave of the Court, to risk the capital of the insolvent's estate in carrying on an indigo concern. *Ventura* v. *Richards and others.* 22d July 1849. 1 Taylor & Bell, 66.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

3. A Zillah Court cannot sell, in execution of its own judgment, property in the possession of an assignee appointed by the Insolvent Court in Calcutta. *Mirza Hossein, Petitioner.* 4th April 1836. 1 S. D. A. Sum. Cases, Pt. i. 10.—D. C. Smyth.

4. A debtor confined in the jail of twenty-four Pergunnahs in execution of a decree of the Court of Requests, is entitled to the benefit of the rules of Sec. 11. of Reg. II. of 1806, in favour of insolvents. *Lukhenarain Pal, Petitioner.* 18th Sept. 1837. 1 S. D. A. Sum. Cases, Pt. i. 15.—Court at large.

5. Under the Insolvent Act, the 11th Vict. cap. 21., a suit cannot be prosecuted in the Civil Courts for any claim against a party applying for the benefit of the Act, if in his schedule he shall have inserted such claim either as admitted, or as being disputed in respect of the amount only: but, if it be entered simply as disputed, without any admission of right, the suit is not stopped. *Joy Chundur Paul Chowdhree* v. *Cockerell and Co.* 5th March 1849. S. D. A. Decis. Beng. 50.—Colvin.

5a. While a suit was pending in the Lower Court the plaintiff became an insolvent under the Statute 11th Vict. cap. 21. Held, on a summary appeal of one of the defendants in the case, that the official assignee must appear for the insolvent, by virtue of his appointment under the statute, to prosecute the suit. *Hedger, Petitioner.* 26th March 1849. 2 Sev. Cases, 473.—Jackson.

INSOLVENT COURT, JURISDICTION OF.—See JURISDICTION, 14 *et seq.*

INSURANCE.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.

I. IN THE SUPREME COURTS.

1. Fraud must be specially pleaded to a count to recover back the premium paid for a policy of insurance. *Methold* v. *Massey and others.* 3d July 1848. Taylor, 385.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

2. A policy of insurance on goods conveyed in boats was held to cease on the arrival of the boats at the *Ghát*, and the insurers were held not to be liable for the loss of the goods after such arrival, but previous to their being landed. *Ghosain Manpooree* v. *Ram Rick.* 15th Sept. 1846. 1 Decis. N. W. P. 167.—Thompson, Cartwright, & Begbie.

3. And the same point was decided, although no intimation had been given to the insured of the

arrival of the goods by the insurer.[1] *Baboo Rowun Pershad* v. *Sheo Sahea and another*. 28th June 1848. 3 Decis. N. W. P. 221.—Tayler.

4. An *Avak Chitti*, or respondentia bond, in which the name of the lender of the money was omitted, was held, by the Sudder Dewanny Adawlut to be an invalid instrument. *Doolubdass Kasseedass* v. *Kumroodeen Bukurbhaee*. 21st Jan. 1848. Bellasis, 79.—Bell, Simson, & Le Geyt.

5. Parties not being owners of goods insured, but agents only of the real proprietors, may sue for the value of such goods if destroyed or injured, where they are proved to have made the contract with the insurers. *Bhowanneeram and others* v. *Jeykishun Dass and another*. 4th April 1850. 5 Decis. N. W. P. 59.—Deane.

INTEREST.

I. IN THE SUPREME COURTS, 1.
1. *Generally*, 1.
2. *In the nature of Damages.*—*See* POWER OF ATTORNEY, 2.

II. IN THE COURTS OF THE HONOURABLE COMPANY, 2 *a*.
1. *Generally*, 2 *a*.
2. *Amount and rate of*, 8.
3. *Demand*, 13.
4. *Accounts*, 15.
5. *Arrears of Rent*, 17.
6. *Bonds*, 24.
7. *Decrees*, 30 *a*.
8. *Deposits*, 33.
9. *Mortgages and Conditional Sales*, 35.
10. *Illegal Interest*. — *See* USURY *passim*.

I. IN THE SUPREME COURTS.

1. *Generally*.

1. Where a Hindú left money to his daughter to be paid to her on her producing a child which should attain majority; it was held, that the mother's right became vested on her eldest son attaining majority, and that interest became payable upon the legacy from the date of its so vesting. *Sree Motee Naboodoorga Dabee* v. *Conny Loll Tagore and others*. 31st March 1847. Taylor, 61.

2. In order to entitle a plaintiff to interest under a written agreement, the interest must be stipulated for; or at any rate an intention to claim interest should be disclosed in the instrument itself. *Braine* v. *Muttyloll Seal*. 22d Nov. 1849. 1 Taylor & Bell, 97.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *Generally*.

2*a*. In the execution of a decree, the adjustment of *Kistbandí* accounts on the *Ganga Jamna*[2] principle, which consists in allowing the creditor interest on the original debt, until the whole debt is liquidated, and the debtor interest at the same rate on his several instalments, was held to be applicable. *Bhairabchandra Chauduri, Petitioner*. 15th Feb. 1847. 2 Sev. Cases, 395.—Reid.

[1] The plaintiff in this case urged that unless the risk remained with the insurer until notice was given to the insured of the safe arrival of the goods, the parties in charge of the property might plunder the boats, and, on their arrival at the *Ghát*, destroy them to prevent detection. The Court observed, that to avoid such a contingency, and to prevent any such temptation to roguery, the insured should induce the insurers to alter the terms of the policy deed, and to adopt the practice which obtains amongst the Calcutta river insurance offices, and extend the liability of the insurers until a period of twenty-four hours shall have elapsed from the boat having anchored at the *Ghát*.

[2] See 3 S. D. A. Rep. 68, note.

3. The Judicial Committee of the Privy Council having modified a decree of the Sudder Dewanny Adawlut, reducing the amount adjudged, the difference was accordingly refunded. A claim to interest on the amount thus paid back was disallowed, the English decree containing no order or provision for the payment of such interest. *Rajah Rajindur Nurain Raee and another* v. *Rajah Bejye Gobind Singh and others.* 9th Aug. 1847. S. D. A. Decis. Beng. 409.—Rattray.

4. Upon the reversal of a sale for arrears of revenue, a private purchaser was not allowed interest on the purchase-money, being in receipt of the mesne profits of the land, and the party suing for the reversal of the sale giving up his claim to the mesne profits. *Ramgopal Surma Turfdar and another* v. *Kishenchundur Surma.* 1st Sept. 1847. S. D. A. Decis. Beng. 495.—Dick, Jackson, & Hawkins.

5. Interest on *Wásilát* should not be allowed for a period prior to the institution of the suit for the recovery of the *Wásilát.*[1] *Bhechuk Singh and others* v. *She Suhaee and others.* 21st June 1847. S. D. A. Decis. Beng. 276.—Rattray, Dick, & Jackson. *Khajeh Mohummud Moheem Khan and another* v. *Chowdhree Debee Purshaud and others.* 18th Sept. 1847. S. D. A. Decis. Beng. 552. — Tucker, Barlow, & Hawkins.

6. In a suit to recover from the defendants the principal and interest of sums paid by the plaintiff to save their joint estate from sale; interest, refused by the Lower Court, was allowed in appeal. *Macpherson* v. *Khajah Gabriel Avietick Ter Stephanoos.* 21st June 1848. 7 S. D. A. Rep. 514.—Dick, Jackson, & Hawkins.

[1] See the case of *Asman Singh and others* v. *Purmesuree Suhaee.* 4 S. D. A. Rep. 176.; Vol. I. of this work, p. 441., Tit. Mesne Profits, Pl. 8, and the note appended thereto.

7. Act XXXII. of 1839 is inapplicable to claims for recovery of revenue paid to Government. *Ibid.*

7*a*. Interest on mesne profits should be given from the date of suit, without reasons being assigned. If given from an earlier or a later date than that of suit, reasons are to be assigned for it in the decree. *Rungmala Chaudhurani, Petitioner.* 1st Oct. 1850. 3 Sev. Cases, 17. Court at large. (Jackson dissent.)

7*b*. Interest on mesne profits runs only from the date of its ascertainment if it has not been ordered in the decree. *Ibid.*

7*c*. In a case where the decree of the Lower Court, affirmed in appeal, had awarded mesne profits (to be adjusted in execution of the decree) from the date of dispossession to that of the recovery of the property adjudged; the Sudder Dewanny Adawlut held, that interest on such mesne profits could be only allowed from the actual date of the ascertainment of the amount thereof. *Ibid.*

2. *Amount and rate of.*

8. A party to a suit which was submitted to arbitration filed a schedule of his debts due to *Mahájans.* In this schedule was entered a sum of money as principal due to the plaintiff's father, and another sum as interest thereon. Plaintiff brought his action for the whole amount, with interest from the date of filing the schedule to the date of action. Held, that the filing of the schedule was a full acknowledgment of the debt, but that the entry of interest could not be allowed, and the Court accordingly decreed to the plaintiff the principal sum entered in the schedule, with a like sum as interest up to the date of suit, together with interest on the principal from the date of suit up to that of the decree, and interest on the whole amount decreed up to the date of payment.

Baboo Beersing Dayb v. *Modhoosoodun Bhoosun.* 5th Feb. 1845. S. D. A. Decis. Beng. 20.—Reid, Dick, & Gordon.

9. The accruing interest, the payment of which may be imposed, under Construction 1010, on any claimant whose objections are evidently collusive and litigious, or vexatious and unfounded, should be calculated upon the amount thereby affected, and not upon the whole amount of the decree. *Rai Sree Kishen, Petitioner.* 3d March 1846. 1 S. D. A. Sum. Cases. Pt. ii. 77.—Reid.

10. Where the appellants founded their action on the *letter* of an engagement they had entered into, viz. that they were to retain possession of property under a lease in consideration of money advanced, till the amount of their advance should be repaid them *in one sum*, the usufruct enjoyed being a set-off against interest; it was decided, that, with reference to Sec. 10. of Reg. XV. of 1793, their claim could not be upheld, as, were it admitted, the restriction to a fixed maximum of interest would be virtually cancelled. *Rampurshad Chowdhree and others* v. *Shumso Nissa and others.* 10th Dec. 1846. S. D. A. Decis. Beng. 414.—Rattray, Tucker, & Barlow.

11. Where delay in instituting a suit arose from the minority of the plaintiff, interest was awarded at the rate of 6 per cent. on each year's mesne profits from the date of possession withheld, and at the rate of 12 per cent. from that date to the date of decree, and the same interest on the aggregate, so calculated, up to the date of realization. *Bamun Das Mookerjee and others* v. *Mt. Tarnee Dibbeah.* 30th Sept. 1850. S. D. A. Decis. Beng. 533. —Barlow, Colvin, & Dunbar.

12. The Lower Courts awarded interest on a claim settled by arbitration, although no provision respecting interest was contained in the arbitration bond. The Sudder Dewanny Adawlut, in special appeal, did not question the competency of the Lower Courts to award interest, but, in consideration of the great delay which had occurred in bringing the suit (its institution only just following within the prescribed legal period of twelve years), they exercised the discretion in respect to the award of interest with which Act XXXII. of 1839 vests them, and modified the judgment of the Lower Courts by awarding interest, with costs in proportion, only from the date of suit to the date of final realization of the decree. *Jeorakhun and another* v. *Incharam.* 9th Sept. 1850. 5 Decis. N. W. P.—Begbie, Deane, & Brown.

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3. *Demand.*

13. *A* claimed rent, and interest thereon, due on a certain Mangoe garden, purchased by *B* from *C*, who had always paid the Mangoe rates. The Lower Court thought, that with reference to Act XXXII. of 1839 no interest was claimable, no proof of notice of demand of interest having been adduced. Held, that the Act did not apply, being merely the extension to India of an English Statute,[1] which was framed to enable parties, in a certain description of cases, to recover interest upon their debts, which interest was not previously recoverable in that class of cases, and the present case being one in which it has always been the practice of the Courts not to adjudge interest when the circumstances of the debt were such as to require it. *Hoolaseeram* v. *Ameeroonnissa and another.* 22d May 1848. 3 Decis. N. W. P. 163.—Tayler, Thompson, & Cartwright.

14. In an action brought to recover the price of certain timbers purchased by the defendant, the Lower Courts decreed in favour of

[1] 3 & 4 Will. IV. c. 42. s. 28.

the plaintiff, *with interest*. Held, that interest could not be awarded, since the debt was not payable by virtue of any written instrument, and since no demand intimating that interest would be claimed was ever made in writing.[1] *Khooda Buksh* v. *Abdool Rühman*. 18th Feb. 1850. 5 Decis. N. W. P. 51.—Tayler, Begbie, & Lushington.

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4. *Accounts.*

15. Interest on shop bills will only run from the date of demand of payment, unless there be proof of a different understanding between the parties. *Prosononath Raee* v. *Nation*. 26th June 1850. S. D. A. Decis. Beng. 314.—Barlow, Jackson, & Colvin.

16. Sec. 7. of Reg. XV. of 1793 provides that "the Courts are not to decree any compound interest arising from intermediate adjustment of accounts." Held, that this rule does not extend to cases in which accounts between the parties shall have been adjusted, and the former bonds or agreements cancelled, and new bonds or agreements taken, for the aggregate of the principal, and the legal interest due upon the adjustment consolidated into principal. *Brijkishore* v. *Jaggernathpershad*. 5th Aug. 1850. 2 Decis. N. W. P. 216.—Begbie, Deane, & Brown.

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5. *Arrears of Rent.*

17. Interest will not be awarded in a suit for balances of rents when it appears that any delay in the realization of the rents by the plaintiffs is attributable to their own *laches*. *Broderick* v. *Hurmohun Raee*. 11th Sept. 1847. S. D. A. Decis. Beng. 536.—Tucker, Barlow, & Hawkins.

18. Claims to interest on balances of rent are not affected by Act XXXII. of 1839. *Mt. Kashipreea and others* v. *Bulram Baboo and others*. 23d March 1848. 7 S. D. A. Rep. 473.—Tucker & Hawkins.

19. The principal only of rent due (within twelve years from date of suit) by the appellant was awarded, as the respondent had the privilege of suing yearly and summarily for arrears; and by neglecting so to do, and delaying his suit for so long a period (thirteen years), had justly forfeited the interest. *Sreenath Mitr* v. *Ranee Kishen Peereea*. 5th July 1848. S. D. A. Decis. Beng. 646. —Dick, Jackson, & Hawkins.

20. Interest on a claim for a balance of rent due was not allowed, on account of delay in instituting the suit.[2] *Ram Gopal Mookerjee* v. *Neel Madobe Ghose and another*. 22d July 1848. S. D. A. Decis. Beng. 705.—Dick.

21. Proprietors of land are entitled to receive interest on all arrears of rent due from their under-tenants. *Sree Rajah Swatachellapaty Rungarow* v. *Sait Jamoonaboyammah and others*. 31st Dec. 1849. S. A. Decis. Mad. 135.—Thompson & Morehead. *Sree Rajah Yenoogunty Ramah Rayaiungaroo* v. *Sait Jamoonaboyammah and others*. 31st Dec. 1849. S. A. Decis. Mad. 137.—Thompson & Morehead.

22. And such proprietors do not forfeit their right to such claim by instituting a suit for the recovery of the interest, instead of resorting to the summary and harsher mode of procedure, distraint and imprisonment, under Cl. 5 of Sec. 34. of Reg. XXVIII. of 1802. *Ibid.*

23. A *Zamíndár*, who had not made any demand on his under-tenant for an arrear of rent due, was held not to be entitled to claim interest upon such arrear. *Neelkaunth*

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[1] Act XXXII. 1839.

[2] Interest was disallowed for a similar reason in *Motee Baboo* v. *Moses Khachik Arakel*. 6 S. D. A. Rep. 67.

Dass and another v. *Kowur Ram Chundur*. 10th June 1850. S. D. A. Decis. Beng. 273.—Barlow, Jackson, and Colvin.

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6. *Bonds*.

24. The highest rate of interest on a bond was awarded, under the circumstances, from the date of a decree for the principal to the date of payment, notwithstanding that the bond on which the decree was founded specified a lower rate of interest.[1] *Dukhna Dossea, Petitioner*. 2d June 1835. 1 S. D. A. Sum. Cases, Pt. i. 8.—D. C. Smyth.

25. Interest on the balance of a bond debt runs from the date of suit, and not from that of decision. *Anund Chunder Ucharj* v. *Chundra Bullee Debeeah Chowdrain and another*. 3d Feb. 1847. S. D. A. Decis. Beng. 33.—Reid, Dick, & Jackson.

26. In a suit for money due on bond, and interest, the defendants deposited in Court the whole amount of the sums borrowed from the plaintiff, and agreed to whatever was due to him being at once paid to him on his producing his accounts. To this the plaintiff would not consent, and his claim for interest was consequently disallowed. *Gunga Purshad Ghose* v. *Kalee Mohun Chowdree and others*. 18th March 1847. S. D. A. Decis. Beng. 77.—Dick.

27. Where defendants admitted a certain balance due on bond, and deposited the same in Court, *but not till after the institution of the suit;* it was held, that the plaintiff was entitled to interest on such balance, from the date of the institution of the suit. *Gouree Purshad Raee* v. *Buhwanee Shuree Dibeeah Chowdrain and another*. 26th May 1847. S. D. A. Decis. Beng. 167.—Dick, Jackson, & Hawkins.

28. In a decree for instalments due on a bond, interest is to be awarded from the date on which the several instalments became due, and not from the date of demand. *Gouree Shunker and others* v. *Bindrabun Doss and others*. 9th Aug. 1847. 2 Decis. N. W. P. 231.—Tayler, Begbie, & Lushington.

29. *A* executed a bond in favour of *B*, with the condition that the interest should be twelve per cent. per annum, that *A*'s lands should be mortgaged, and that the produce, after defraying the *Sirkár* rent, should be first accounted for as payment of interest, and the remainder, if any, as payment of principal. In a suit by *B* for the recovery of the principal and interest, *A* admitted the bond, but contended that its condition was illegal and contrary to the Regulations, and that if counter interest should be allowed on payments acknowledged by *B* to have been made to him, a smaller sum than that claimed would be found due. The original and Appellate Courts, on the above grounds, did not allow *B*'s claim to the full extent sued for, but the Sudder Adawlut, on special appeal, held that the Lower Courts had misunderstood the law; that the Regulation (Sec. 4. of Reg. XXXIV. of 1802) as to excessive interest did not apply, only relating to interest unpaid and in arrear; and that a sum equal to the principal is recoverable as interest, exclusive of all payments made; and that also such previous payments must ordinarily be carried to the head of interest, unless otherwise stipulated in the agreement entered into between the parties. The whole amount sued for was accordingly decreed to *B*. *Goday Sooreya Narraina Row* v. *Capela Soobiah*. 27th Sept. 1849. S. A. Decis. Mad. 65. —Thompson & Morehead.

30. A sum equal to the principal due on a bond is recoverable as in-

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[1] In this case the payment had not only been deferred, but the defendant had also thrown every obstacle in the way of the realization of the debt by the Petitioner.

terest exclusive of payments made, which latter cannot be considered as part of the interest to which Sec. 4. of Reg. XXXIV. of 1802 applies. *Lalpetta Vencatapaty Naidoo* v. *Rajah Bommarauze.* 1st July 1850. S. A. Decis. Mad. 27.—Hooper & Freese.

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7. *Decrees.*

30*a*. In a decree for money due on a *Tamassuk* against the respondent, the Court allowed interest from the date of the decree to that of payment. In the application for the enforcement of the decree, it appeared that the appellant had neglected to recover the sum decreed in his favour for upwards of eight years. Held, that on account of such wilful neglect he could not be allowed any interest on the amount decreed, except that which might accrue from the date of his application for the execution of the decree to that of satisfaction made by the respondent. *Purrao Sahoo* v. *Rauj Singh.* 29th Feb. 1844. 2 Sev. Cases, 479.—Barlow.

30*b*. The Sudder Dewanny Adawlut will direct payment of interest, conformable to the decretal order of a final decree, by the debtor, notwithstanding any laches by the decree-holder in the enforcement of his decree, and will decline interference on a summary application against such payment.[1] *Bindobashi Debiah, Petitioner.* 19th March 1850. 2 Sev. Cases, 535. — Barlow, Colvin, & Dunbar. *Mt. Peerun Bibi and another, Petitioners.* 21st March 1850. 2 Sev. Cases, 546.—Dunbar.

31. The interest with which a claimant may be charged under Construction No. 1010 should be recovered from him by the decree-holder. *Choonee Lall Sein, Petitioner.* 10th March 1847. 1 S. D. A. Sum. Cases, Pt. ii. 92.—Tucker.

32. Under Construction No. 1010, the interest charged to a claimant, should not be added to the debt of the person answerable for the amount decreed, but the decree-holder should recover it from the opposing party. *Choonee Lall Sein, Petitioner.* 10th March 1847. 1 S. D. A. Sum. Cases, Pt. ii. 92.—Tucker. *Syud Abdoollah* v. *Birj Ruttun Das and others.* 9th Aug. 1848. S. D. A. Decis. Beng. 755.—Rattray.

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8. *Deposits.*

33. No interest can be claimed on a deposit repayable on demand, without proof of demand. *Sheikh Imaum Buksh* v. *Sheikh Ghoolam Rusool.* 7th May 1845. S. D. A. Decis. Beng. 150.—Reid, Dick, & Gordon.

34. An objection to the payment of a deposit to the party entitled to receive it, found on investigation to be insufficient, renders the objector liable for interest on the deposit during the period of detention. *Dewan Ramnath Singh* v. *Thakur Das.* 3d April 1846. 7 S. D. A. Rep. 260.—Rattray.

34*a*. The accruing dividends of interest of Company's paper in deposit to meet the costs of an appeal to the Privy Council may be drawn by the depositor, or his transferee under his *Barát námeh*, unless attached by the decree-holder under an order of Court. *Paul, Petitioner.* 26th Feb. 1849. 2 Sev. Cases, 455. —Jackson.

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9. *Mortgages and Conditional Sales.*

35. A mortgagee is not entitled to 12 per cent. per annum from an estate, which may yield less than that rate of interest, where he has accepted the usufruct in lieu of interest. *Bhubootee Singh* v. *Bheem Singh.*

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[1] A similar order of interest was passed in the special summary appeal of *Junwur Das and another* v. *Radhakoowur and others.* 19th March 1850.—Barlow, Colvin, & Dunbar. The case of *Purrao Sahoo* v. *Rauj Singh* is therefore now no longer a precedent.

19th Jan. 1847. 2 Decis. N. W. P. 8.—Tayler, Thompson, & Cartwright.

36. Where by a mortgage bond it was stipulated that interest should be satisfied annually from the usufruct, and that any excess should be applied to the liquidation of the principal; it was held, that the residue of sums received from the usufruct, after payment of interest, should be carried to the liquidation of the principal, and the account closed to the end of each year; and that the account should not run on from the date of the loan to the date of settlement, interest being allowed on the whole sum lent, to one party, and to the other, on the sums realized from the usufruct from the date of realization.[1] *Durbaree Lal Sahoo and others* v. *Baboo Ram Nurain Singh and another*. 19th June 1848. S. D. A. Decis. Beng. 549.—Rattray, Dick, & Jackson.

37. The terms of a mortgage deed being that, for the liquidation of the sum lent, the mortgagee should hold possession of a certain village until the principal and interest were paid; the mortgagee, suing for possession, which had been denied him, cannot include in his suit a claim for interest, such not being in accordance with the terms of the deed. *Pophee and others* v. *Cheda Lall*. 19th June 1848. 3 Decis. N. W. P. 211.—Tayler, Thompson, & Cartwright.

INTERPLEADER ACT.—See Act, 1.

INTOXICATION, OFFENCES COMMITTED IN A STATE OF.—See Criminal Law, 149.

[1] And see the case of *Muhronnissa Khanum* v. *Mt. Budamoon*. 1 S. D. A. Rep. 185.

ISTIMRÁRDÁR.

1. If an *Istimrárdár* have gotten possession of more land than was included in his grant, it is no reason why he, or his heir, should be summarily dispossessed. *Maharajah Rooder Singh and others* v. *Mutoornath Ghose*. 8th March 1845. S. D. A. Decis. Beng. 45.—Gordon.

ISTIMRÁRÍ.—See Grant, 1*a*. Inheritance, 29; Lease, 13.

JÁGÍR.—See Grant, 9.

JÁTS.—INHERITANCE OF.—See Inheritance, 34.

JHANSA.—See Criminal Law, 150.

JOINT PROPERTY.—See Ancestral Estate, *passim*; Undivided Hindú Family, *passim*.

JOINT FAMILY.—See Undivided Hindú Family, *passim*.

JOINT MAGISTRATE.—See Magistrate, 1.

JOINT-STOCK COMPANY.

1. The Supreme Court will not compel a private trading association to enrol transfers of shares after it has stopped payment. *The Queen* v. *The Directors of the Union Bank*. 1st May 1848. Taylor, 371.

2. Plaintiffs were indorsees of Union Bank Post bills from one *A*, a purchaser for value and a shareholder in the Bank. Held, that *A*, being himself a shareholder, could not

sue the Bank, and that plaintiffs being identified with him were *in consimili casu*. *Allan and another* v. *Russell.* 6th July 1848. Taylor, 389.

3. Nothing short of general ratification can prevail against a Bank sued at law in the name of the nominal defendant, when the right to sue is based on ratification by the Bank. *Ibid.*

JUDGES, POWERS OF.—See PRACTICE, 343 *et seq.* CRIMINAL LAW, 57, 58. 180 *et seq.*

JUDGMENT. — See PRACTICE, 232 *et seq.*

JUDGMENT, CONFESSION OF.—See PRACTICE, 329 *et seq.*

JUDGMENT, REVIEW OF.—See PRACTICE, 332 *et seq.*

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.—See APPEAL, 1 *et seq.* PRACTICE, 1 *et seq.*

JUDICIAL INTEREST. — See INTEREST, 11, 12. 30*a et seq.*

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JURISDICTION.

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- 9. *As to value of Suits.—See* ACTION, 121 *et seq.*

I. Of the Supreme Courts.

1. *On the ground of Inhabitancy.*

1. One *A*, during his lifetime, possessed a house in Calcutta, where he occasionally resided with his family. After his death, *B*, his younger widow, became entitled to a share in that family dwelling-house, but never did, during her widowhood, actually reside there. Held, that she was subject constructively to the jurisdiction of the Supreme Court. *Sreemutty Bamasoondery Dossee* v. *Sreemutty Rajcoomaree Dossee and others.* 10th May 1847. Taylor, 70.

2. The defendant, jointly with his two brothers, inherited a house in Calcutta, wherein the latter usually resided; but the defendant only occasionally came down to reside there. Held, that he was constructively subject to the jurisdiction. *Mudoosoodun Pyne and others* v. *Hurrydoss Mullick.* 2d July 1847. Taylor, 74.

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2. *As to British Subjects.*

3. Semble, The Tenasserim Provinces, not having been annexed to the Presidency of Fort William, British subjects resident there are not, on that account alone, subject to the jurisdiction of the Supreme Court; and are not, by reason of their character of British subjects alone, entitled to any exemption from the Courts (legally constituted) of those provinces. *Fewson* v. *Phayre.* 23d Aug. 1848. Taylor, 405.

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3. *Submission to the Jurisdiction.*

4. The name of a British subject cannot, without his assent, be inserted in a contract for the purpose of creating jurisdiction against any inhabitant of India, &c., under Sec. 13. of the Charter of the Supreme Court at Calcutta. *Gholam Ahmed* v. *Bindobasinee Dabee.* 2d Aug. 1849. 1 Taylor & Bell, 63.

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4. *On the ground of having been a party to prior proceedings.*

5. A *Subpœna*, to compel appearance and answer of certain defendants to a bill of review, was granted, although the defendants were not subject to the *general* jurisdiction of the Court, but had been defendants to the original suit, and had not objected. *Mahomed Feroze Shah and another* v. *Aftab-o-deen and others.* 9th Feb. 1849. 1 Taylor & Bell, 74.

5*a*. Semble, That it was open to them to raise the point of jurisdiction at the hearing. *Ibid.*

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5. *As regards Probate and Administration.*

6. The power to grant probate and administration is general, and not limited to where the death occurs within Bengal, Behar, and Orissa. *In the Goods of Shelton.* 19th March 1846. Montriou, 167.

7. Where there is a proof of testacy, the Court cannot grant general administration; but Semble, a limited grant will be made on special grounds of necessity. *Ibid.*

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6. *In matters relating to the Revenue.*

8. By the Charter of the Supreme Court at Bombay, that Court is prohibited (in like manner as the Supreme Court at Calcutta, under the 21st Geo. III. c. 70. s. 8.) from entertaining any jurisdiction in any matter concerning the revenue, under the management of the Governor and Council, or any act done in the collection thereof. *Spooner* v. *Juddow.* 14th Feb. 1850. 6 Moore, 257. 4 Moore Ind. App. 354.

9. In an action of trespass brought against the Collector of Revenue at Bombay, for distraining for arrears of Government "quit-rent," the defendant pleaded "not guilty" only. The Supreme Court at Bombay held that "quit-rent" was not "revenue"

within the meaning of the Charter of the Supreme Court, and that the act complained of was not warranted by the usage of the country and the Company's Regulations, and that the Court had jurisdiction to entertain the action, and found for the plaintiffs. Held, by the Judicial Committee, reversing such finding and judgment, first, that "quit-rent" was part of the revenue of the East-India Company; and, secondly, that it being a matter concerning the revenue, and the collection thereof, the Supreme Court had no jurisdiction; and that the Court being excluded by the Charter from any matter concerning the revenue, the plea of "not guilty" was sufficient, and that the Judge ought at the trial to have directed a nonsuit, or a verdict to be entered for the defendant. *Ibid.*

7. *Plea to the Jurisdiction.*

10. Where a bill states one general and one special ground of jurisdiction, the latter being founded on peculiar facts, as to which relief is sought, the defendant cannot demur to the relief thereby sought, and to the jurisdiction thereon alleged, and also plead to the general ground of jurisdiction. *Hingun Bibee* v. *Ayna Bibee and others.* 3d Dec. 1849. 1 Taylor & Bell, 126.

8. *Equitable Jurisdiction.*

11. The Supreme Court at Madras has an equitable jurisdiction, similar to, and corresponding with, the equitable jurisdiction exercised by the Court of Chancery in England over charities. *Attorney-General* v. *Brodie and others.* 15th Dec. 1846. 6 Moore, 12. 4 Moore Ind. App. 190.

9. *Admiralty Jurisdiction.*

12. The Court has no jurisdiction to decree the sale of a British ship, at the suit of a party having a lien upon the possession for repairs. *Stalkartt* v. *Mackey and others.* 6th July 1846. Montriou, 227.

13. Semble, Power to try for a misdemeanour committed on the high seas is conferred by the 33d Geo. III. c. 52. s. 156. *The Queen* v. *Scanlan.*[1] Montriou, 210.

II. Of the Insolvent Court.

14. The Insolvent Court has jurisdiction to inquire whether mortgaged personal property in the possession of the assignee, was or was not in the possession of the mortgagor, as reputed owner, with the consent of the true owner, with a view to order a restoration of it by the assignee, in case he should have seized it erroneously under that belief. *Llewellyn* v. *O'Dowda.* 23d July 1847. Taylor, 169.

15. The Insolvent Court cannot compel a mortgagor, whose debt is undisputed, and who is not within the provisions of the Section relative to reputed ownership, to realize his securities by a sale in that Court, under the order of the Court, though this may be done by consent. *Ibid.*

16. The general authority of the Insolvent Court over the assignee, as its officer, is sufficient to give jurisdiction to that Court to order him to pay money in his hands to the parties entitled to it. *Ibid.*

17. The Insolvent Court has power to direct payment to a second mortgagee after a sale, when the money is in the hands of the assignee. *Ibid.*

[1] Mr. Montriou, in a note appended to the report of this case, cites no less than seven cases from the registry of the Admiralty Crown proceedings and the Admiralty records, where parties were tried for misdemeanours committed on the high seas, and adds—"Had these precedents, or a portion of them, been in the knowledge of the learned Bench at the time of the argument or judgment above reported, the question of jurisdiction, however capable, in principle, of ingenious and sound discussion and dispute, would doubtless have been treated as *res judicata.*

III. Of Justices of the Peace.

18. Trespass for false imprisonment; plea, not guilty by statute. The defendant (a *Mofussil* Magistrate and Justice of the Peace of Calcutta) issued a summons to one *A* charged with assaulting *B*. The constable who served the summons reported that *A* had committed a contempt of process, and had refused to attend. The defendant then passed an order for the caption of *A*, unless he appeared by a given day. The constable again made a similar report, and also made deposition before the junior Magistrate (to whom the case had been referred for trial) implicating both *A* and his father. The junior Magistrate wrote an order for issuing a warrant, and accordingly upon that order a warrant was issued, directing the apprehension of both father and son, and signed by the defendant as Magistrate and Justice of the Peace. Under it, *A* and his father were taken. Held, that the defendant having signed the warrant as a Justice of the Peace must be taken to have issued it in that character, and that, as Justice of the Peace, he had acted wholly without jurisdiction, and was liable. *Gasper* v. *Mytton*. 10th Feb. 1848. Taylor 291.

IV. In the Courts of the Honourable Company.

1. *Of the Civil Courts generally.*

(*a*) *Generally.*

19. The Civil Courts cannot, with reference to the Circular of the 6th of May 1844, take cognizance of claims for perquisites of the office of *Chaudhari*.[1] *Poorun Mul and another* v. *Khedoo Sahoo*. 28th Nov. 1846. 7 S. D. A. Rep. 282. — Rattray, Tucker, & Barlow.

20. In deciding upon claims to property attached in execution of decrees of Court, it is competent to the Civil Courts to determine whether an award under Act IV. of 1840, adduced in proof of possession, be a decision in a *boná fide* or a fictitious case. *Maharajah Muhtab Chundur Bahadur, Petitioner*. 31st Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 128.—Tucker, Barlow, & Hawkins.

21. Under the provisions of Sec. 17. of Reg. XXIV. of 1793, the Civil Courts cannot entertain actions for the recovery of money allowances granted as charges upon estates previous to the decennial settlement. *Kishen Gobind Bhuttacharj* v. *Collector of Tipperah*. 30th Aug. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 134 note. — Tucker. *Issur Chundur Thakoor, Petitioner*. 7th March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 133.—Hawkins.

21*a*. A Civil Court is not competent to fine an individual on a charge for the same offence of which he has been acquitted by the criminal authorities. *Broderick, Petitioner*. 14th Dec. 1848. 2 Sev. Cases, 441. —Hawkins.

21*b*. Claims to the right of inheritance, or succession to the tributary estates, are cognizable in the first instance by the superintendent of the *Mahálls*.[2] Decisions and orders passed thereupon are appealable to the Sudder Dewanny Adawlut, if presented within the limited period of three months after the decree or order. *Kumlah Debia Paut Ranee, Petitioner*. 3d Jan. 1849. 2 Sev. Cases, 443.—Hawkins.

22. A claim in an insolvent's schedule, entered as a "*disputed item*," does not bar the jurisdiction of the Company's Courts as to such item. *Joy Chundur Paul Chowdhree* v. *Cockerell & Co*. 5th March 1849. S. D. A. Decis. Beng. 50.—Colvin.

23. An objection to the jurisdic-

[1] The Circular Order of the 6th May 1844 supersedes Construction No. 816, dated the 23d Aug. 1833.

[2] Reg. XI. 1816, s. 2. See also Construction No. 864.

tion of the Civil Court on account of a claim not having been first referred to the Nawáb of Furrukhabad under Sec. 8. of Reg. II. of 1803, not having been pleaded in the Court of first instance, cannot be entertained in special appeal.[1] *Hasil Zumma Khan and another* v. *Hushmut Jehan Begum and another*. 11th June 1849. 4 Decis. N. W. P. 152. — Thompson, Begbie, & Lushington.

24. The orders of the military authorities respecting disputes as to fees receivable at a certain Ghát situated within their cantonments were held not to bar the jurisdiction of the Civil Courts in regard to such disputes.[2] *Kalka* v. *Mahadeo and others*. 11th Sept. 1849. 4 Decis. N. W. P. 311.—Thompson, Begbie, & Lushington.

25. The prohibition against entertaining, in another district, a suit for the *same cause of action*, refers to the *same identical suit*, which may have been previously instituted in another Court in which it was cognizable. *Joy Chundro Raee* v. *Bhyrub Chundro Raee and another*. 18th Dec. 1849. S. D. A. Decis. Beng. 461.—Barlow, Colvin, & Dunbar.

26. Sec. 12. of Reg. III. of 1793 refers to the *same identical suit* which may have been previously instituted in another Court in which it was cognizable.[3] *Joy Chundro Raee* v. *Bhyrub Chundro Raee and another*. 18th Dec. 1849. S. D. A. Decis. Beng. 461.—Barlow, Colvin, & Dunbar. *Mobarukonissa* v. *Sheodyal Singh*. 6th March 1850. S. D. A. Decis. 39.—Barlow & Colvin.

27. A Civil Court cannot issue an order for the mutation of names in the accounts of a Post-master's office. *Gunesh and another* v. *Ramdhun*. 5th Aug. 1850. 5 Decis. N. W. P. 212.—Begbie, Deane, & Brown.

27*a*. The pledge of property out of the twenty-four Pergunnahs, as security for a debt contracted in the twenty-four Pergunnahs by a party resident in the twenty-four Pergunnahs, does not render him subject to the jurisdiction of the Zillah Court of Midnapore (as to the debt), where the property is situated.[4] *Jaygopal Ray, Petitioner*. 17th Aug. 1850. 3 Sev. Cases, 15.—Jackson.

28. Where a Special Commissioner's Court has declared a defined portion of land to be *Lákhiráj*, the Civil Courts have no jurisdiction to try whether that land, *or any part of it*, is *Lákhiráj* or not. *Lal Beharee* v. *Shah Shujaut Ali*. 2d Sept. 1850. S. D. A. Decis. Beng. 459.—Barlow, Jackson, & Colvin.

29. The decision by a Provincial Court of a question of jurisdiction brought before it in a summary appeal by a party to a suit in an Auxiliary Court, was held to be final and to preclude the further consideration of the point at the final hearing of the cause. *Govindarout and others* v. *Nachear Ummal*. 31st Oct. 1850. S. A. Decis. Mad. 94.—Hooper & Morehead.

29*a*. The Civil Courts are restricted from interfering with the succession to the estate of a person deceased, without the institution of a regular suit. And in a case where the Zillah Judge had directed the transfer of possession from one party to another, who did not come in within six months of the decease of the proprietor, the Sudder Dewanny Adawlut reversed the order of the

[1] Construction No. 843, 29th Nov. 1833.

[2] The only Court located within military cantonments whose decisions upon questions of property are independent of the ordinary Civil Courts is the Court of Requests: the orders in the present case were evidently not decisions of a Court of Requests; and even if they had been, the jurisdiction of the Court could not be barred by them, since the cause of action exceeded in value Rs. 200.

[3] See Harington's Analysis, p. 38. Second Edition.

[4] And see the case of *Ashootos Dey* v. *Gregory*. 7 S. D. A. Rep. 69.

Zillah Judge, and directed restoration of possession to the party dispossessed. *Brijomonnee Dasi, Petitioner.* 4th Dec. 1850. 3 Sev. Cases, 9.—Dunbar.

(b) As regards certain matters relating to the Revenue.

30. The object of a suit being to break up a *Butwárá,* confirmed by the revenue authorities twenty years before, the Principal Sudder Ameen notwithstanding gave the plaintiff a decree to be executed against one of the shares alone, thereby taking lands on which Government revenue had been assessed, and giving them to another party, but leaving the *Jama* as before. Held, on appeal, that this was beyond the power of the Civil Court, as thus not only the *Butwárá* was broken, but the permanent settlement also. The appeal was decreed accordingly, and the plaintiff's claim dismissed with costs. *Ishor Chunder Podar* v. *Aulim Chunder Podar.* 24th April 1845. S. D. A. Decis. Beng. 125.—Tucker, Reid, & Barlow.

31. It is competent to the Civil Courts to take cognizance of a suit instituted to obtain the reversal of a Settlement Officer's order, under which an engagement was made, infringing the rights of parties claiming a priority of right of settlement. *Mirza Ameer Beg and others* v. *Gour Dyal Sing and others.* 14th May 1845. S. D. A. Decis. Beng. 166.—Barlow.

32. Held, that the Civil Courts cannot give orders with regard to the estates directed under Sec. 26. of Reg. V. of 1812 to be held in attachment by the revenue authorities under Reg. V. of 1827. *Joy Gopal Chowdery, Petitioner.* 16th March 1847. 1 S. D. A. Sum. Cases, Pt. ii. 93.—Tucker.

33. Arrangements made by the proprietors of an estate after its attachment, according to Sec. 26. of Reg. V. of 1812, and Reg. V. of 1827, and disallowed by the revenue authorities, are not binding upon such authorities, and cannot be taken notice of in the Civil Courts. *Coell, Petitioner.* 1st Feb. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 129.—Hawkins.

33*a*. Where decrees had been given in the Lower Courts annulling the proceedings of the revenue authorities held under Sec. 5. of Reg. IX. of 1825, the Sudder Dewanny Adawlut annulled the decisions of the Lower Courts, on the ground of want of jurisdiction,[1] and remanded the proceedings, holding that they were obliged to notice the want of jurisdiction, although, through ignorance of the parties, it was not pleaded as a ground for a special appeal. *Ramkishore Dutt* v. *Collector of Tipperah.* 19th May 1847. S. D. A. Decis. Beng. 162. —Tucker.

34. Held, that under Sec. 5. of Reg. VII. of 1822, the question of *Málikáneh* rests exclusively with the revenue authorities under the control of Government itself, and is not a point that can be contested in the Civil Courts. *Collector of Bhagulpore* v. *Shewuk Ram.* 26th July 1847. S. D. A. Decis. Beng. 367. —Rattray, Dick, & Jackson.

35. The Civil Courts are incompetent to raise an objection to a stamp affixed by the revenue authorities.[2] *Ramsookh* v. *Nuthoo and others.* 27th March 1848. 3 Decis. N. W. P. 95.—Thompson & Cartwright.

36. In a suit brought *expressly* for the reversal of a summary decree under Reg. VIII. of 1831, no points can be made the subject of inquiry in the Civil Courts, excepting such as were, or might have been, summarily inquired into by the Collector. *Ramnurain Singh* v. *Raee Hurree Kishen and others.* 26th

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[1] Under Cl. 1. of Sec. 2. of Reg. III. of 1828, cases disposed of by the Collector under Sec. 5. of Reg. IX. of 1825, are appealable to the Special Commissioner.

[2] Construction No. 1331, dated the 15th April 1842.

Aug. 1850. S. D. A. Decis. Beng. 429.—Barlow & Colvin.

37. And even in a suit brought in the first instance in *the regular* Courts, to contest or prefer a claim for arrears of rent, the only question for inquiry is the existence or not of a balance according to the terms of the alleged engagement, and the Courts cannot go into pleas not bearing directly on that point. *Ibid.*

(c) With regard to the Government.

38. The privilege of collecting the rents and paying in the Government revenue cannot be decreed by the Civil Courts, such right having been generally considered and held by many authorities to be at the disposal of the Government. *Mohun and others* v. *Ram Buksh.* 15th June 1847. 2 Decis. N. W. P. 183. —Begbie & Lushington.

39. It is not competent to the Civil Courts to set aside the decision of the Government regarding the assessment of revenue in *Butwárás. Baboo Prannath Chowdhree* v. *Unoodapershad Raee.* 15th May 1848. S. D. A. Decis. Beng. 451. —Jackson.

40. *Málikáneh* cannot be awarded by the Civil Courts when it has not been sanctioned by the Settlement Officer, as, by Cl. 1. of Sec. 10. of Reg. VII. of 1822, the power of making arrangements for the distribution of the profits of an estate is vested in the Government rather than in the Civil Courts. *Baboo Sumshere Suhaee* v. *Achumbit Tewaree and others.* 25th Nov. 1848. 3 Decis. N. W. P. 399.—Tayler & Cartwright.

41. The plaintiff sued to obtain possession and entry of name, as heir of her deceased husband, in certain estates appertaining to an *Istimrár Talook* granted by the Government in perpetuity. Held, that the State, having parted with its interests to the extent conveyed by the grant in perpetuity, saving the reversionary right accruing on the failure of the lineal descendants of the grantee, was precluded from interference in any of the events of succession in the tenure, which will fall under the cognizance of the Courts of Judicature. *Ranee Roop Koonwur* v. *Rao Nathooram and another.* 13th Aug. 1850. 5 Decis. N. W. P. 240.—Begbie, Deane, & Brown.

(d) With regard to the Supreme Courts.

42. The Company's Courts are not competent to inquire into the merits of a judgment of the Supreme Court, or of the proceedings had in execution under it.[1] *Prosonnath Raee* v. *Hurree Nurain Gosain.* 10th Sept. 1849. S. D. A. Decis. Beng. 385.—Barlow.

43. No question as to the validity or maintenance of an order of the Supreme Court, declaring the foreclosure of a mortgage in a suit in that Court, in which the mortgagor was a party, can be raised by the heirs of the mortgagor in the Company's Courts. *Issur Chundur Ghose and another* v. *Neelkummul Paul Chowdhree and others.* 2d Sept. 1850. S. D. A. Decis. Beng. 458. —Barlow, Jackson, & Colvin.

(e) As to the Agency Department.

44. There is nothing in the treaty between the British Government and the Nawáb of Furrukhabad, dated the 4th June 1802, to indicate that the Governor-General's Agent was to have jurisdiction with regard to disputed claims to *Zí Hakk* allowances, and much less that his orders were to be final and irreversible by the Civil Courts. *Hasil Zumma Khan and another* v. *Hushmut Jehan Begum and another.* 11th June

[1] See the cases *Nobin Kishen Huldar* v. *Bissumber Seil.* 6 S. D. A. Rep. 187. *Besumber Seil* v. *Dwarkanath Tagore.* 7 S. D. A. Rep. 71. *Hurpershad Ghose* v. *Chunder Kant Mokerjea.* 7 S. D. A. Rep. 70.

1849. 4 Decis. N. W. P. 152.—Thompson, Begbie, & Lushington.

45. An order of a resident, or of the agency department, was held not to have the force of a decree so as, under Sec. 10. of Reg. II. of 1803, to bar the jurisdiction. *Nārain Dass* v. *Mirza Rahut Bukht and others.* 23d Sept. 1850. 5 Decis. N. W. P. 373.—Begbie, Deane, & Brown.

(*f*) *As regards Resumption.*

46. An action, the real, though not avowed, object of which is to reverse a decree of the Courts for the trial of resumption suits, cannot be heard by the ordinary Courts. *Sudder Board of Revenue* v. *Dilawur Ali and another.* 4th March 1846. 7 S. D. A. Rep. 256.—Tucker, Reid, & Jáckson.

47. Where a party claimed certain land under a decree passed by a *Pancháyit*, and admitted that it had been resumed by Government, and a settlement for it made with the defendants; it was held, that the Civil Courts had no jurisdiction, and that he ought to seek redress in the Resumption Court. *Mohunt Munohur Das* v. *Mohunt Jygram Das.* 10th Dec. 1846. S. D. A. Decis. Beng. 413.—Tucker, Reid, & Barlow.

48. A decree of the Resumption Courts in regard to the right of assessment of lands does not bar the jurisdiction of the ordinary Courts of Justice in regard to the proprietary right. *Syud Shah Mohummed Yasin* v. *Syud Enyet Hussein and others.* 17th Dec. 1846. 7 S. D. A. Rep. 284.—Rattray, Tucker, & Barlow.

49. Mixed questions involving the rights of *Málguzárs*, under the decennial settlement and of Government, to resume and assess, are cognizable both by the Resumption Courts and the Judicial Courts. *Muharanee Koonwul Koonwaree* v. *Baboo Beer Singh and others.* 28th Dec. 1847. S. D. A. Decis. Beng. 640.—Dick.

50. To decide on the question of assessment is peculiarly the province of the Resumption Courts: to decide on the question of proprietary right is peculiarly the province of the Judicial Courts. Thus, in the case of a suit to resume a *Láhhiráj* tenure, the Resumption Courts would pronounce upon the validity or invalidity of the tenure; but the Civil Courts might still entertain a suit between parties claiming the proprietary right, and desirous of being admitted to enter into the settlement with Government. *Hur Gobind Ghose, Petitioner.* 17th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 109. — Tucker, Barlow, & Hawkins. *Hureeram Bukshee and others* v. *Ramchundur Banerjee and others.* 15th Aug. 1850. S. D. A. Decis. Beng. 407.—Dick, Barlow, & Colvin.

51. The Civil Courts have no power to entertain an application for redress by a party considering himself aggrieved by an order of the Resumption Courts defining the boundaries of a resumed *Mahǎll:* his proper remedy is an application to the Resumption Courts. *Hur Gobind Ghose, Petitioner.* 17th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 109.—Tucker, Barlow, & Hawkins.

52. The resumption of lands on the part of Government, and their subsequent settlement, is not open to question by the Civil Courts.[1] *Ram Dolub Burmun* v. *Gourmohun Chowdhree and others.* 7th Aug. 1849. S. D. A. Decis. Beng. 327.—Barlow, Colvin, & Dunbar.

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[1] The case of *Bhoobun Mye Debbea, Petitioner,* 1 S. D. A. Sum. Cases, Pt. ii. 95, may seem at variance with these decisions; but in that case there was an express reference to the Special Commissioner, and an order on his part, declaring that the resumption of the land under one name should not affect the rights of the party as proprietor, and that there was no bar to the execution of the Civil Court's decree, which awarded to that party a portion of the same land under another name.

53. A claim to lands, exempted, after inquiry, from assessment, and adjudged by the Resumption Courts to the defendants, was, nevertheless, tried on its merits. *Mosahiboodddeen* v. *Ranee Kishen Munee and others.* 29th Jan. 1848. 7 S. D A. Rep. 426.—Tucker, Barlow, & Hawkins.

54. A claim to land, exempted from assessment by the Resumption Courts, which declared the defendants to be the rightful owners of the same, was tried on its merits; and it was at the same time ruled that the Resumption Courts had exceeded their power in making any declaration in regard to the right of property. *Gunganarain Acharj and others* v. *Mt. Chundrabuttee Dibbea and others.* 31st Jan. 1848. 7. S. D. A. Rep. 428.—Jackson.

(g) As to Magistrates.

55. Magistrates are not amenable to the *Mofussil* Courts for their official acts. *Government* v. *Brijsoondree Dassee and another.* 18th May 1848. 7 S. D. A. Rep. 497. — Tucker, Hawkins, & Currie.

56. The Civil Courts are not competent to interfere with the order of a Magistrate, even though such order be illegal, passed under Act. IV. of 1840, in regard to possession or dispossession. The appeal should be to the Sessions Judge. *Noadharee Singh and another* v. *Mt. Wuheedun and others.* 15th May 1850. S. D. A. Decis. Beng. 203. — Dick, Jackson, & Colvin.

(h) As to Collectors and their Acts.[1]

57. Where an objection was raised to a sale as illegal, having been postponed, without the issue of the prescribed notice, to a date beyond that originally fixed by the Collector; it was held, that such objection was not cognizable by the Courts under Secs. 24. and 25. of Reg. XI. of 1822, it not having been made to the superior revenue authority of the division, within the period prescribed for an appeal to that authority against the proceedings of the Collector in regard to the disposal of lands by sale. *Mirza Shaban Beg and others* v. *Government and others.* 5th April 1845. S. D. A. Decis. Beng. 102.—Rattray.

58. An action cannot be brought in the Civil Court to uphold a sale made by a Collector for balance of Government revenue which is disallowed by the Commissioner, since no sale can be said to be effected till the Commissioner has confirmed it. *Janokeenath Chowdree* v. *Collector of Moorshedabad.* 10th July 1845. S. D. A. Decis. Beng. 227.—Barlow.

59. A Collector cannot be sued as a judicial officer for any act done under order of the Court; but he may be sued as a revenue officer where the rights of parties are injured by his acts.[2] *Hill* v. *Hastie and another.* 18th Nov. 1845. 2 Sev. Cases, 305.—Barlow.

60. An objection to a sale not being mentioned in the petition to the Commissioner, cannot, under Sec. 25. of Act. XII. of 1841, be legally entertained by the Civil Court. *Government* v. *Rughobeer Singh and others.* 31st March 1846. S. D. A. Decis. Beng. 130. — Rattray, Tucker, & Barlow.

61. At a sale for arrears of revenue, *A*'s estate was first knocked down for Rs. 60,000, but the bidder not being able to put down the earnest-money, it was immediately put up again, and knocked down to *B* for Rs. 40,000, who also could not put down the earnest-money; but to him the Collector gave time, and he paid it the next day. *A* complained to the Revenue Commissioner, but his

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[1] And see the *placita* under the Title Collector, 2 *et seq.*

[2] And see the case of *Mir Ali* v. *Raghab Ram Ray.* 18th Nov. 1830. 5 S. D. A. Rep. 72.

complaint was rejected, and he then sued the Collector, and *B*, the auction purchaser, to cancel the sale. Held, that under Reg. XI. of 1822, and the Circular Orders of the Board of Revenue, the Civil Courts had no jurisdiction to entertain the point. *Govind Munee Dasee and others* v. *Collector of Zillah Nuddeah and another*. 19th May 1846. S. D. A. Decis. Beng. 190.—Dick.

62. A Civil Court cannot, notwithstanding the institution of a suit for such purpose, summarily interfere to stay the sale by a Collector of property pledged as security in the revenue department. *Gour Mohun Doss, Petitioner*. 14th July 1846. 1 S. D. A. Sum. Cases, Pt. ii. 81.—Reid.

63. The Civil Courts cannot interfere to stay the proceedings in the Criminal Courts in the prosecution of a case of forgery at the instance of the Collector. *Neelmunee Dutt, Petitioner*. 19th Nov. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 87.—Tucker, Reid, & Barlow.

64. A Collector is not personally amenable to the Civil Courts for acts done by him under Reg. VIII. of 1831. *Collector of Purneah, Petitioner*. 15th June 1847. 1 S. D. A. Sum. Cases, Pt. ii. 104.—Hawkins.

65. An action to contest the validity of a sale made on account of arrears of revenue, under the provisions of Reg. XI. of 1822, cannot be entertained, unless petition of objection shall have been made to the revenue authority.[1] *Tradut Jehan* v. *Amanut Ali and others*. 22d May 1848. 3 Decis. N. W. P. 165.—Tayler, Thompson, & Cartwright.

66. And such petition must be presented within thirty days from the date of the sale. *Ibid*. (Tayler dissent.)[2]

67. *Quære*, whether the orders of a Collector, passed in his fiscal capacity, under the provisions of Act I. of 1841, can be set aside by a Court of Justice. *Junghye Lall* v. *Chotoo Singh and others*. 7th Sept. 1848. 2 Decis. N. W. P. 325.—Thompson.

68. A sale of property within the domains of the Rájah of Benáres having been illegally made in realization of a decree by the Collector of Benáres, was annulled by the Sudder Dewanny Adawlut, who issued instructions to the Rájah to reinstate the plaintiff. *Sheo Baluk* v. *Bhowanee Shunker and another*. 26th March 1849. 4 Decis. N. W. P. 55.—Tayler & Cartwright. (Thompson dissent.)[3]

69. In a suit for the recovery of a sum of money on account of *Málguzárí*, in rescission of the orders of the Deputy-Collector and Collector; it was held, that the decision of the revenue authorities was not binding on the Civil Courts, although it was the duty of the latter to pay every attention to the judgment of the authorities, whose opportunities and means of obtaining correct information on these subjects are necessarily very favourable. *Bhuwannee Tu-*

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[1] Reg. XI. 1822, ss. 24, 25.

[2] Mr. Tayler differed with regard to the thirty days. He considered that the Board of Revenue might, at any time previous to the confirmation of the sale, institute any inquiry they pleased into the irregularity of the sale, and might reverse it: he also thought that they might refuse to receive a petition of objections after the thirty days; but if they acted upon it, and instituted any inquiry into the alleged objections before confirmation of the sale, the Courts would have authority to try those objections.

[3] See Regulation VII. of 1828. The majority of the Court observed, "The Rajah stands in respect to the Courts in the same position as the Collector: sales of land are made through him, and possession given to the purchaser in the same manner as in a sale made by a Collector." Mr. Thompson thought that the authority of the Court only extended to the annulment of the illegal proceedings of the sale, and that the plaintiff should be left with the Court's decision in his hand to seek for the possession of his estate by application to the persons vested with authority in the Rájah's domains.

hul Singh v. *Mt. Omutoolbutool.* 11th June 1850. 5 Decis. N. W. P. 114.—Begbie, Deane, & Brown.

70. *A*, *B*, and *C* were the *Zamindárs* and *Málguzárs* of a *Maháll*, comprising three *Mauzas*, in the separate possession of each, which was held under a joint engagement. At the general Settlement in 1239 *Faslí*, the assessment was made on the entire *Maháll* as before, but the demand was distributed on the three *Mauzas*, and, on the refusal of *C*, engagements were taken from *A* and *B*. In 1246 *Faslí* a revision of the assessment was made, and the Settlement was renewed with *A* and *B*. The name and share of *C* were entered in the *Patídárí* record of both Settlements, but the papers of village administration were made out as usual in the names of the two *Málguzárs* *A* and *B*. *C* applied afterwards to be re-admitted to engagements, but, on the objection of the *Málguzárs* in possession, his application was rejected by the Collector. *C* then brought a suit for possession as proprietor, and for the *Málguzárí*, or right of management of his share of the *Jama* with the amendment of the Settlement orders and arrangements of 1246 *Faslí*, against the *Málguzárs* in possession. The Moonsiff decreed the suit with reservation of the *Sudder Málguzárí* right, which he considered to be beyond the jurisdiction of the Court, and his decision was upheld in appeal. Held, by the Sudder Dewanny Adawlut, that the authority of the precedents, which have ruled that the Civil Courts have no power to direct the Collector to take engagements from one party, or to turn out another, necessarily extends, in this case, to the consequents of those engagements; that the papers of village administration, prepared under Sec. 3. of Reg. IX. of 1833, are merely expository of the arrangements and responsibilities agreed to by the parties who have accepted engagements, either in their own name, or through their representatives; and that the jurisdiction of the Courts is therefore as much barred in directing the restoration of a recusant party to subordinate management, such as that claimed by *C*, as in decreeing his admission to the privileges of *Sudder Málguzár*. *Mookut Singh* v. *Urjoon Singh*. 9th Sept. 1850. 5 Decis. N. W. P. 301.— Begbie, Lushington, & Brown.

(i) On the ground of inhabitancy.

71. In a suit for the recovery of a sum of money under the conditions of a lease of two villages situated in Zillah Meerut; it was held, that the deed of lease having been executed in Dehli, and the defendants being resident there, and the dispute being as to the violation of the terms of the deed, the suit should be tried in Dehli, and not in Meerut. *Hurdyal Singh* v. *Newab Taj Mehul Begum and others*. 16th March 1847. 2 N. W. P. 85.—Thompson & Cartwright. (Tayler dissent.)

72. Held, that the migratory life a *Gosain Maharáj* leads, his duties requiring him to move constantly from place to place, exempts him from being held to be a resident in any particular jurisdiction, for the purposes of Cl. 2. of Sec. 3. of Reg. III. of 1827, even when he happens to be temporarily residing within it. *Keshowlall Roopchund* v. *Kesreesing Hureechund*. 23d March 1847. Bellasis, 68.—Bell, Simson, & Le Geyt.

73. Where an adjustment of accounts, upon which a claim was founded, took place at Benáres, and the defendants were residents of that city, and the suit was brought in the Court of Azimgurh; it was held, that the establishment of the firm at Azimgurh was sufficient to constitute the constructive residency of the partners, and that therefore the suit was properly brought at Azimgurh. *Rogonath Pershad* v. *Cheedeelall Dabeepershad*. 12th

Aug. 1847. 2 Decis. N. W. P. 250. —Lushington.

74. *A*, a Hindú, died, leaving a will, of which he appointed *B* and *C* his executors, who took out probate in the Supreme Court at Calcutta. *D*, his widow, sued *E* and *F* in the Zillah Court of the twenty-four Pergunnahs, as the heirs of the executors, for a sum due to her, under the will, which she alleged had not been paid to her. *B* had died, leaving *C* his surviving executor; and it was held, that as there was nothing to shew that any part of the assets of the estate of *A* had passed into the hands of *B*, an action could not be maintained against *E*, *B*'s son, merely as being his father's heir. *C* died, leaving *F*, his wife, the executrix of his will, of which she took out probate in the Supreme Court, the will to be performed in the district of Nuddea, where *C* was domiciled. Held, that *F* was in no way under the jurisdiction of the Court of the twenty-four Pergunnahs; and that the mere fact of her husband having had a hired house in it during his lifetime, or of his having received the will of *A* there, after *A*'s death, was insufficient to bring her within the jurisdiction, in the absence of any thing to shew her personal liability to it. *Mt. Soluchna* v. *Harris and another*. 4th July 1848. S. D. A. Decis. Beng. 638. —Hawkins.

(*j*) *Where trial should take place.*

75. Held, that the Court in which a suit for a portion of property, claimed under a disputed title, should be instituted, is to be determined with reference to the value of the title, and not to the value of the portion sued for.[1] *Aseemooddeen* v. *Moonshee Munneerooddeen Mahomed and another*. 28th Feb. 1846. 7 S. D. A. Rep. 255.—Tucker, Reid, & Barlow.

76. *A*, having borrowed money in one district, died without leaving any property in the district in which he borrowed the money, and was succeeded by heirs resident in another district. Held, that under Sec. 8. of Reg. III. of 1793, a suit against the heirs might be heard either in the district in which the debt was incurred, or in that in which the heirs resided. *Kali Tara Mujmoodar and another, Petitioners*. 1st June 1847. 1 S. D. A. Sum. Cases. Pt. ii. 103.—Court at large.

77. A suit for property situate in two districts cannot be tried in one of them without previous sanction being obtained. *Fyzonissa Khatoon* v. *Sukeena Khatoon*. 15th June 1847. S. D. A. Decis. Beng. 256. —Tucker.

78. An action on a bond should, under Construction No. 351, be tried in the district where the debt was incurred, and not where the bond was executed, the debt being the cause of action, and the bond merely evidence of it. *Sunkur Mahter* v. *Bhowani Singh Sirdar*. 24th June 1847. S. D. A. Decis. Beng. 279. —Hawkins.

79. A mortgagee had obtained judgment in the Supreme Court on a mortgage bond, and subsequently sold the mortgaged property, which was situate in the *Mofussil*, agreeably to the stipulations of a special condition, which enabled the mortgagee to proceed to such sale. The purchaser sued in the Company's Courts for possession of the property. The Zillah Judge gave judgment, according to the English law, in favour of the purchaser, and his judgment was affirmed on appeal, on the ground that "the Supreme Court would not admit a suit for ejectment, as the monthly tenants of the property in question were not amenable to its jurisdiction; and it is only by an action for ejectment that they would entertain a suit for right and

[1] The principle which regulated this decision had been previously recognised by the Circular Order No. 16. Vol. ii., dated the 31st. Aug. 1832.

title." Held, on review of judgment by the Sudder Dewanny Adawlut, that the purchaser ought to have sought for his remedy in the Supreme Court; that, however, as the Company's Courts had jurisdiction over the property, and possessed, therefore, a concurrent jurisdiction, he was at liberty to sue in the Company's Courts instead of the Supreme Court, but that he must do so upon the understanding that his title would be tested, not by the English, but by the *Mofussil* law.[1] *Bhuwannee Churn Mitr* v. *Jykishen Mitr and another*. 24th July 1847. 7 S. D. A. Rep. 362.—Tucker, Dick, & Hawkins.

80. *A* brought two separate actions for debt in the Zillah Court against *B*, the father of the appellant *C*, by the other appellant *D*. *B* dying whilst the suits were pending, was succeeded by his son *C*, and decrees were given in favour of *A* in both cases. *A* took out execution of the decrees, and attached certain property, as that of the defendant *C*, his judgment creditor. To this property claims were set up by *D*, who alleged it to be hers under certain conveyances made to her by *B*. These claims, after rejection by the Zillah Court, were summarily admitted by the Sudder Dewanny Adawlut, and thus the decree-holder, *A*, was left to the remedy of bringing a suit to prove the liability of the property to sale in execution of his decrees. The defendant (appellant) *C*, however, took out probate of his father's will from the Supreme Court, and thus subjected himself to its jurisdiction. On this, *A* brought an action against *C* in the Supreme Court, on the strength of the Zillah decrees in his favour. He obtained judgment, and, in execution, attached the same property against which he had previously taken out execution in the Zillah Court. *D* again advanced her claims, and subsequently brought an action against the Sheriff, on the dismissal of which, the Sheriff put up the property to sale, when it was purchased by the respondent *E*. Held, that *E*, the purchaser, could sue for possession of the property in the Sudder Dewanny Adawlut, under the title he purchased at the Sheriff's sale. *Bibi Takoi Sheraab and others* v. *Mukeethur Vardoon*. 20th Sept. 1848. 7 S. D. A. Rep. 547.—Jackson & Hawkins. (Dick dissent.)[2]

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[1] Messrs. Tucker and Hawkins observed, in their judgment in this case—"Had the plaintiff first sought his remedy in the Supreme Court, and come into our Courts upon a decree of that Court, in consequence of difficulties in obtaining possession, which the Supreme Court could not reach; or had he come upon a title derived from an act done under the process of that Court; he would then have stood in a very different position, as he would have come into the *Mofussil* Courts under totally different circumstances. Our Courts would not then have had any thing to say to the nature of the transaction. Instead of acting upon their own laws, governing private transactions, they would have acted on the more general rule, which requires them to respect the judgments and proceedings of a Court of competent jurisdiction and authority."

[2] Messrs. Jackson and Hawkins remarked in their judgment that—"We do not see why the summary proceeding of this Court should now operate as a bar to the long received practice of the Court, of admitting actions for possession of property on titles purchased at a Sheriff's sale." And again—"We consider that the miscellaneous order of this Court would have operated as a bar to any summary giving of possession to the purchaser at the Sheriff's sale, but not to a regular suit by the purchaser to try the question of right." Mr. Dick, in referring the case to a full Court, contended that as the Sheriff's sale took place in execution of the judgment of the Supreme Court, the Supreme Court was therefore the proper Court to carry out its own judgment, and to it the plaintiff should have had recourse. He also observed—"*This is no case of alienation of immoveable property by a decree of the Supreme Court, in which the Act of the Court extends to giving possession.* The alienation is not only contrary to the law and practice of our Courts, but, in this instance, is actually in defiance of their repeated orders." He afterwards added, in

81. Suits for recovery of excess of rent of land should, under Sec. 8. of Reg. III. of 1793, and Construction 73, be instituted in the Zillah where the land is situated, rather than in that where the defendants reside. But such suits are admissible, under Construction 739, in the Zillah where the defendants are resident, and should not be dismissed by the Zillah Courts, but transferred to the Court of the Zillah in which the lands are situate. *Gopee Kunt Misr, Petitioner.* 19th Feb. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 132.—Tucker, Barlow, & Hawkins.

82. A suit for the reversal of a sale of real property, made in execution of a decree of Court, must be instituted in the district in which the property is situated. *Boodhai Singh, Petitioner.* 7th March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 135.—Tucker & Hawkins.

83. If land be claimed by the parties to a suit as appertaining to their respective districts, reference should be made to the Sudder Dewanny Adawlut, to decide in which district the trial is to be held. *Rae Hureekishen and others, Petitioners.* 18th July 1848. 1 S. D. A. Sum. Cases, Pt. ii. 143.—Hawkins.

84. In a suit for a balance of mercantile accounts with two banking-houses at Benâres and Lucknow, belonging to the defendant who was resident at Allahabad, such suit being brought at Futtehpore; it was held, that inasmuch as the defendant's acknowledgment of the balance was made at Allahabad, and the accounts adjusted there, the cause of action could not be considered to have arisen at Futtehpore, and the plaintiff was nonsuited accordingly. *Jowalla Pershad* v. *Sujjoo Mull.* 25th Nov. 1848 3 Decis. N. W. P. 398.—Tayler, Thompson, & Cartwright.

85. Where certain persons contracted within a particular jurisdiction, the one to deliver, and the other to receive and pay for, certain goods at a specific rate, and after the goods had been delivered and partly paid for, the same parties entered into an engagement, within another jurisdiction, to pay and receive respectively the balance due, with interest, by instalments; it was held, that such fresh engagement constituted a new cause of action, and that an action for the breach of it might be received and tried within the latter jurisdiction, though the defendant was not resident there.[1] *Gudahur Sapooee* v. *Kubeer Mistree.* 15th March 1849. S. D. A. Decis. Beng. 68.—Dick, Barlow, & Colvin.

86. The circumstance of certain villages, pledged in a bond, being situated in a territory beyond the jurisdiction of the Courts, does not preclude a recourse to them for the recovery of any sum that can be proved to be justly due on the bond; and the obligee, having been disseised of the pledge, may sue for the balance of the debt due on the bond after crediting the obligors with the intermediate receipts. *Narain Dass* v. *Mirza Rahut Bukht and others.* 23d Sept. 1850. 5 Decis. N. W. P. 373.—Begbie, Deane, & Brown.

(*k*) *Foreign Territories.*

87. The orders of Government,

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recording his dissent—"The case of *Bhuwanee Churn Mitr* v. *Jykishen Mitr.* (7 S. D. A. Rep. 362) is strictly a precedent in point. In that, the sale was subsequent on a decree. In this, in execution of a decree. Neither is a case of alienation by a decree of the Supreme Court; and both are cases of alienation contrary to the law and practices of our Courts, the *lex loci rei sitæ.*" He would therefore have dismissed the suit with full costs.

[1] In this case the Court observed, that the place of performing the condition of a bond, and therefore the jurisdiction in which a suit for its non-performance would lie, must be taken to be the place where the new engagement was executed; on the general principle, that, unless otherwise expressed, or clearly implied, the place of executing a contract is to be taken as that of its intended performance. But see *supra*, Pl. 78.

dated the 24th Dec. 1832, cannot be considered inconsistent with, or abrogatory of, the provisions of Reg. XIV. of 1829; nor can they be held to contemplate the rejection of suits against parties residing in foreign territories, when any portion of the property of such parties may lie, or the cause of action may have arisen, within the limits of the British possessions. *Fuqueer Chund* v. *Sunkur Dutt and another.* 21st July 1846. 1 Decis. N. W. P. 84.—Thompson, Cartwright & Begbie.

88. The exemptions set forth in Reg. XXII. of 1812, regarding the territories and *Jágírs* therein specified, cannot be held to confer upon the inhabitants of those territories and *Jágírs* immunity from all debts and obligations which may be contracted within the jurisdiction of the Civil Courts established by the British Government. *Ibid.*

89. No notice can be legally served by the Civil Courts on a resident of the territories and *Jágírs* specified in Reg. XXII. of 1812, so long as he may avail himself of the protection which the law affords, by remaining within their limits; but this protection from civil process is withdrawn whenever the party may happen to place his person within the limits of the British possessions which are subject to the operation of the general Regulations.[1] *Ibid.*

89*a*. A defendant, a resident of a foreign state, was held to have clearly placed himself, by his own act, within the jurisdiction of the Company's Courts, where he had put in an answer to a plaint in the Court of a Principal Sudder Ameen, and had afterwards applied to the Judge for a review of judgment, without, in either instance, furnishing the security required by Cl. 1. of Sec. 2. of Reg. XIV. of 1829, in the absence of which he could not be heard. *Ibid.*

90. In a boundary dispute between the plaintiff (the Rajah of Tipperah) and the Government, the Sudder Dewanny Adawlut held, that they had no jurisdiction, as the lands in litigation were claimed as within the independent territory of the plaintiff. *Maharajah Kishen Kishore Manik* v. *Collector of Sylhet and others.* 19th Sept. 1848. 7 S. D. A. Rep. 541.—Barlow & Hawkins. (Dick dissent.)

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2. *Of the Zillah Judges.*

91. A Zillah Judge cannot interfere with a judgment passed in appeal. A summary appeal, as well as a special appeal from a decision passed in appeal, lies to the Sudder Dewanny Adawlut only. *Khedun Thakoor and others, Petitioners.* 21st June 1847. 1 S. D. A. Sum. Cases, Pt. ii. 105.—Hawkins.

91*a*. In the case of a mortgaged *Zamíndárí*, partly situated in two separate districts; it was held, that an order, made by the Judge of the Civil Court of one district, for foreclosure of the whole of the mortgaged property, was a sufficient compliance with the provisions of Sec. 8. of Beng. Reg. XVII. of 1806, so as to give the Civil Court of that district jurisdiction to entertain a suit relating to the whole property comprised in the mortgage, and to decree a foreclosure. *Ras Muni Dibiah* v. *Pran Kishen Das.* 27th June 1848. 4 Moore Ind. App. 392.

92. A Zillah Judge cannot try an appeal from his own decision while Collector, passed under Sec. 30. of Reg. II. of 1819. *Gooroo Das Koond* v. *Odenurain Rae and others.* 23d Dec. 1848. 7 S. D. A. Rep. 560.—Court at large.

93. But he may try, as Judge, a

[1] The Court remarked—"That Cl. 1. of Sec. 2. of Reg. XIV. of 1829, though it contemplates the service of a summons on the defendant (the resident of a foreign territory), does not prescribe any specific rule for such service, and the expression must allude to the possible contingency of a foreigner, sued in the Civil Court, putting himself within its jurisdiction, and thus subjecting himself to its process."

suit instituted for the reversal of an order passed by himself as Collector. *Ibid.*

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3 *Of Principal Sudder Ameens.*

94. The direction of a Principal Sudder Ameen to a Moonsiff to receive a supplemental plaint, was declared to be illegal. *Gour Kishore Dutt and others* v. *Kishen Kinkur Sirkar.* 27th May 1847. 7 S. D. A. Rep. 309.—Hawkins.

95. The Moonsiff gave a decree against four defendants, only one of whom appealed. The Principal Sudder Ameen, disbelieving the evidence, reversed the decision of the Moonsiff, and dismissed the original claim as against all the defendants. Held, that, under Construction No. 997, the Principal Sudder Ameen had full power to dispose of the case with reference to all the interests affected by the decree of the Lower Court. *Mulóok Chaund Dullal* v. *Purusdee Sircar and others.* 5th June 1847. S. D. A. Decis. Beng. 194.—Tucker, Barlow, & Hawkins.

96. In a suit on the part of a wife to stay the sale of immoveable property in execution of a decree against her husband, alleging the same to have been conveyed to her by her husband under a *Bay Mokása*; it was held irregular in the Principal Sudder Ameen to try the suit, as he had, as *Kázi*, attested the instrument on which the claim was founded. *Mt. Gousun* v. *Mt. Wuzeerun and another.*[1] 28th Aug. 1847. S. D. A. Decis. Beng. 481.—Tucker, Barlow, & Hawkins.

97. A Principal Sudder Ameen is not debarred from trying a suit, because a deed filed in such suit, and connected with it, had been attested by him as *Kázi.*[2] *Gosain Bhunjun Geer, Petitioner.* 30th Dec. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 148. —Barlow, Jackson, & Hawkins.

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4. *Of Sudder Ameens.*

98. A Sudder Ameen has no jurisdiction to try a *Lákhiráj* title. *Kari Misser and others* v. *Khyali Chowdhree.* 29th Feb. 1848. S. D. A. Decis. Beng. 120.—Hawkins.

99. And where he had tried such title, and his decision was affirmed by the Principal Sudder Ameen, the case was returned to the latter to be tried by him as a Court of first instance. *Ibid.*

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5. *Of Moonsiffs.*

100. A Moonsiff may summarily decide between conflicting claims to heirship, and allow the successful party to institute a suit. *Kishen Lal Kutturyar Gyawal* v. *ByjooKoormee.* 13th June 1846. S. D. A. Decis. Beng. 222.—Tucker, Reid, & Barlow.

101. Plaintiffs sued in the Moonsiff's Court for the balance due on a bond for Rs.475: the defendant denied the execution of the bond. Held, that under the Circular Order of the 31st of Aug. 1832, the case was not cognizable by the Moonsiff, and he ought to have nonsuited the plaintiff.[3] *Mt. Subhago and*

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[1] In this case the Court observed—"We are of opinion that the Principal Sudder Ameen should not have tried this case. In his capacity of *Kázi* of the town of Arrah he attested the deed in virtue of which the plaintiff claims the property, and might have been called upon as a witness. The deeds connected with the subsequent sales by *Shah Kubeerooddeen* (the plaintiff's husband) are likewise attested by the Principal Sudder Ameen as *Kási*; and he would have acted with discretion had he solicited the Judge to remove the case into his own Court."

[2] The deed in this case was not disputed by either party. The Court remarked that the precedent of *Mt. Gousun* v. *Mt. Wuzeerun* did not apply, as the order in that case had reference to the special nature of it, and was not intended for a general rule.

[3] See Macpherson's Procedure, 133.

others v. *Rutteeram and another.* 25th Nov. 1846. 1 Decis. N. W. P. 211. — Thompson, Cartwright, & Begbie.

102. A Moonsiff cannot, under Sec. 16. of Reg. VIII. of 1831, send for a case originally instituted as a summary suit, under Reg. VII. of 1799 and Reg. VIII. of 1831, in the Collector's office. *Mt. Juleeba Koomsur* v. *Rambuksh Maktoon.* 20th March 1847. S. D. A. Decis. Beng. 81.—Tucker.

103. Under the Circular Order No. 67, of the 8th Oct. 1844, a Moonsiff is authorised to entertain actions and claims to the proprietary right in, and possession of, lands held exempt from the payment of revenue; but under the 3d paragraph of that letter, and the Circular Order No. 95, of the 30th Aug. 1833, the Moonsiff has no jurisdiction if the validity of such tenure be disputed. *Deonath Jha and others* v. *Maharajah Hetnarain.* 1st July 1847. S. D. A. Decis. Beng. 301.—Hawkins.

104. A Moonsiff has no jurisdiction to try a disputed right to hold land free from assessment. *Deonath Jha and others* v. *Maharajah Hetnarain and others.* 1st July 1847. S. D. A. Decis. Beng. 301.—Hawkins. *Teloke Chundur Banerjee and others* v. *Ramdoolal Surma Mujmoodar and others.* 10th May 1849. S. D. A. Decis. Beng. 146. —Jackson.

105. If the value of land sued for be within Rs. 300, and if the suit comprise the whole claim of the plaintiff in respect of the same cause of action, the Moonsiff has jurisdiction to entertain it, although the land sued for may form a part of a purchase of greater value, and exceeding the amount which may be sued for in the Moonsiff's Court. *Muha Rajah Het Nurain Singh* v. *Lala Khurugjeet Singh.* 16th Aug. 1849. S. D. A. Decis. Beng. 352.—Dick, Barlow, & Colvin.

106. The fact of a mortgage bond being in excess of Rs. 300 is not of itself sufficient to place a suit founded on such bond beyond a Moonsiff's competency. It is necessary to shew that the value of the mortgage exceeds Rs. 300 at the time the suit is instituted. *Mt. Ameeroonnissa and another* v. *Meer Syed Ali.* 4th Sept. 1849. 4 Decis. N. W. P. 297. —Thompson, Begbie, & Lushington.

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6. *Of Special Commissioners.*

107. A Special Commissioner is incompetent to decide on the rights of individuals to participate in the benefits of a released rent-free tenure, whether that tenure be hereditary or otherwise, such rights being only determinable by the Civil Courts. *Cassim Alee and others* v. *Husunoollah and others.* 27th Sept. 1847. 2 Decis. N. W. P. 352.—Tayler & Lushington. (Begbie dissent.) *Abdoollah Khan* v. *Azeemoollah Khan.* 14th Sept. 1848. 3 Decis. N.W.P. 336.—Thompson.

108. It is the duty of a Special Commissioner to determine the validity of grants, and not the respective interests of individuals in those grants. *Ibid.*

JURY.

I. In Civil Cases, 1.

II. In Criminal Cases. — See Criminal Law, 48.

I. In Civil Cases.

1. A Judge calling in the aid of a Jury under Cl. 4. of Sec. 3. of Reg. VI. of 1832, must treat them strictly as jurors, and not merely as persons to whom he has referred particular questions for decision. *Mohesh Chundur Ghosal* v. *Sheikh Goraiee Naik.* 24th April 1850. S. D. A. Decis. Beng. 150.—Barlow & Colvin.

JUSTICES OF THE PEACE.—See Evidence, 2; Jurisdiction, 18.

KABÚLIYAT.

1. In a suit on a *Kabúliyat*, the essential point for decision is as to the fact of its execution, and the existence of any balance due thereon: other points (such as disputes as to the right in the land for which the *Kabúliyat* was executed) can only be regarded, in such a suit, as affecting the credibility of the evidence as to the execution of the document. *Ram Nurain Burmun and others* v. *Sheikh Lal Mohummud.* 22d July 1850. S. D. A. Decis. Beng. 360. —Colvin & Dunbar.

KATKINÁ.—See Action, 138, *et seq.*; Arbitration, 27.

KATL-I KHATÁA.—See Criminal Law, 160.

KATL-I UMD.—See Criminal Law, 49 *et seq.*; 160 *et seq.*

KÁZÍ.—See Jurisdiction, 96, 97.

KILLING SORCERERS AND WITCHES.—See Criminal Law, 156.

KILLING THIEVES.—See Criminal Law, 75.

KULÁCHÁR.—See Inheritance, 16 *et seq.*

KUTKUNEH.—See Action, 138 *et seq.*; Arbitration, 27.

LÁDAVÍ.—See Deed, 5. 8. 11; Relinquishment, *passim.*

LÁKHIRÁJ.—See Evidence, 128 *et seq.*; Jurisdiction, 28. 50. 53, 54. 98, 99. 103, 104; Land Tenures, 1 *et seq.*; Limitation, 38 *et seq.*; Patnídár, 7. 9. 11.

LAND, ASSESSMENT OF.—See Assessment, *passim.*

LAND, LEASE OF.—See Lease, *passim.*

LAND, RESUMPTION OF.—See Jurisdiction, 46 *et seq.*; Limitation, 38 *et seq*; Resumption, *passim.*

LAND TENURES.

I. Lákhiráj, 1.
1. *Generally*, 1.
2. *Mániyam*, 7.
3. *Servamániyam*, 8.
4. *Maáfi*, 9.

II. Málguzárí, 10.
1. *Generally*, 10.
2. *Selotrí*, 13.
3. *Patní*, 14.
4. *Talook*, 17.
5. *Mukarrarí*, 22.

I. Lákhiráj.

1. *Generally.*

1. Where the question of the validity of a *Lákhiráj* tenure is at issue before a Moonsiff, he should refer the suit to the Judge, in order that he may, after referring it to the Collector for report under Sec. 30. of Reg. II. of 1819, either decide it himself, or refer it to the Sudder Ameen, or Principal Sudder Ameen. *Bhola Nath Serma* v. *Luteef Khan.* 28th Nov. 1846. S. D. A. Decis. Beng. 403.—Tucker, Reid, & Barlow.

2. In deciding upon the fact of possession of lands as rent-free, it is

irregular to pronounce upon the validity of the tenure. *Anungmoonjooree Dassee* v. *Ram Koomar Chowdhree.* 26th Feb. 1848. S. D. A. Decis. Beng. 116.—Tucker, Barlow, & Hawkins.

3. The Government and the *Zamíndár* sued simultaneously to resume certain lands claimed as rent-free; the Special Commissioner declared the *Zamíndár* entitled to the lands as his *Mál* lands, and *therefore* dismissed the claim of the Government. Held, that it was erroneous to conclude that the rent-free tenure had been upheld, because the Government claim had been rejected. *Ishwur Chundur Sircar* v. *Sartuk Naee.* 1st July 1848. S. D. A. Decis. Beng. 629.—Tucker, Barlow, & Hawkins.

4. If a defendant deny that lands sued for are, as alleged by the plaintiff, *Lákhiráj*, the case must be referred to the Collector for decision, and is not cognizable by a Moonsiff. *Teloke Chundur Banerjee and others* v. *Ramdoolal Surma Mujmoodar and others.* 10th May 1849. S. D. A. Decis. Beng. 146.—Jackson.

5. Cl. 1. of Sec. 30. of Reg. II. of 1819, which provides for the reference of suits respecting rent-free lands, under certain circumstances, to the Collector for his investigation and opinion, cannot be set aside by a Civil Court, even by consent of parties. *Nubeenchundur Mookerjee* v. *Ranee Jumoonakoonwary.* 27th Dec. 1849. S. D. A. Decis. Beng. 487.—Colvin.

5 *a.* Semble, the exclusion of lands, as *Lákhiráj* from the decennial and permanent settlements, is of no weight, *per se*, as evidence of exemption from resumption under the Bengal Reg. XIX. of 1793. *Maha Raja Dheeraj Raja Mahatab Chund Bahadoor* v. *The Government of Bengal.*[1] 18th Feb. 1850. 4 Moore Ind. App. 466.

6. The general presumption is in favour of the liability to assessment of land; and, by the Bengal Regs. XIX. of 1793 and XIV. of 1825, the *onus probandi* lies on a claimant to *Lákhiráj* lands, to establish his title to exemption, not by inference, but by positive proof by a grant, to hold as *Lákhiráj*, or by a proprietary right, prior to the grant of the *Díwání* in 1765, and that the possession was *boná fide* taken under it, or an enjoyment of lands held as such, and descendible to heirs, at or since that time. *Ibid.*

6*a.* The validity of an alleged *Lákhiráj* tenure cannot be tried without reference to the Collector for report, as required by Sec. 30. of Reg. II. of 1819. *Munnoo Lal and others* v. *Jeeoo Lal and others.* 3d April 1850. S. D. A. Decis. Beng. 95.—Barlow & Colvin.

2. *Mániyam.*

7. A *Mániyam*, restored, after resumption, to one member of a family, originally undivided, but subsequent to a division between the members of such family; was held to be his self acquisition, and the fact of his having given shares in the land to his relations was considered as a voluntary act of generosity and affection to which they had no legal right or title. *Ravoory Kristniah* v. *Ravoory Panakaloo and others.* 12th Nov. 1849. S. A. Decis. Mad. 107.—Hooper.

3. *Servamániyam.*

8. The order of a Collector, founded solely on the report of an Ameen, to issue a *Dumbálah* in the plaintiff's name, for the produce of certain land, and also to continue to do so for the future, cannot be held sufficient to substantiate the plaintiff's claim to enjoy the land in question as a *Servamániyam*, in the absence of any trustworthy evidence in support of it. *Vencatadry* v. *Stokes.* 17th Dec. 1850. S. A. Decis. Mad. 116.—Hooper.

[1] The report of this case came into my hands too late to be inserted under the Tit. Evidence, which see Pl. 128. 134.

4. *Maáfi.*

9. Ex-*Maafidárs* have the right of alienating resumed *Maáfi* land, of which the settlement had been made with them. *Khyratee Singh* v. *Anund Singh.* 18th Feb. 1850. 5 Decis. N. W. P. 50.—Tayler, Begbie, & Lushington.

II. Málguzarí.

1. *Generally.*

10. In a suit for resumption and assessment of rent-free lands, there was no proof of possession under a *Lákhiráj* grant prior to the decennial settlement. Held, that subsequent possession was insufficient to sustain a claim to hold rent-free. *Ghosain Doss* v. *Gholam Moheeoodden and another.* 28th Jan. 1846. S. D. A. Decis. Beng. 20.—Reid & Tucker. *Bulram Punda and another* v. *Sheikh Gool Mohumud.* 28th Jan. 1846. S. D. A. Decis. Beng. 25.—Reid & Jackson. *Koose Chucherbuttee* v. *Sheikh Gool Mohumud.* 28th Jan. 1846. S. D. A. Decis. Beng. 27.[1]—Reid & Jackson.

11. In a suit for resumption and assessment of lands, the defendant filed a decision of the Register, which merely shewed that a former *Zamíndár* had admitted the right of the occupant, from whom the defendant's husband purchased, to hold his land rent-free, and allowed him so to hold his tenure, and that the defendant had held the same rent-free, but produced no other document on which to found her claim to hold rent-free. Held, that the *Zamíndár* had the same rights as were possessed by the *Zamíndár* at the time of the decennial settlement, being the successor of an auction-purchaser; and that the decision in question, and the possession by the defendant, in absence of other proof, were insufficient to establish the right of the latter to hold rent-free.[2] *Dost Mahomed Khan Chowdry* v. *Kashee Isree Debea.* 28th Jan. 1846. S. D. A. Decis. Beng. 22.—Reid & Jackson.

12. Sec. 12. of Reg. XXV. of 1802 refers to lands made over to religious and other purposes free of tax, and to the resumption of *Lákhiráj* lands, and not to the transfer of *Málguzárí* lands, which, when transferred, bore an assessment of the whole estate. *Goureevullabha Taver* v. *Sreematoo Rajah and others.* 8th Nov. 1849. S. A. Decis. Mad. 102. —Thompson & Morehead.

2. *Selotrí.*

13. The plaintiffs, as *Selotrídárs*, sued to recover possession from the defendants, their under-tenants, of certain land. Held, by the Sudder Dewanny Adawlut, that the principle adopted throughout the country, between the Government and the cultivator, being to the effect that the latter, so long as he pays the Revenue to Government, cannot be ousted; so *Selotrídárs*, in the absence of special agreement, upon the same principle cannot oust cultivators holding land under them. *Kumboo Man* v. *Luxumon Chrushna Koluktur and another.* 22d Nov. 1842. Bellasis, 32.—Bell, Giberne, & Hutt.

3. *Patní.*

14. A party cannot let lands in *Patní* after attachment of his rights in the lands in execution of a decree.

[1] In all these cases Mr. Dick considered the suit to be barred by the Rule of Limitation. See the Note to Pl. 38. Tit. Limitation, *infra.*

[2] In this case Mr. Dick was of opinion that as the defendant's husband had *boná fide* purchased the property in the year 1824 from one who, it was also in proof, had possession in 1804, and that her husband, and she herself, had held quiet possession rent-free under a *boná fide* legal title, upwards of twelve years, the claim of the *Zamíndár* was barred by the Rule of Limitation. And see the note *infra*, Tit. Limitation, Pl. 38.

Mt. Nujumoonisa and others v. *Shaik Mahomed Bheekun.* 18th March 1846. S. D. A. Decis. Beng. 108.—Reid, Dick, & Jackson.

15. A *Patní* created by a *Zamíndár* being lost to the *Patnídár* by a sale of the estate for arrears of revenue; it was held, that the price of the *Patní* could not be recovered from the surplus sale proceeds at the ex-*Zamíndár's* credit. *Pitumbur Raee* v. *Raee Radha Govind Singh and others.* 1st May 1848. S. D. A. Decis. Beng. 391.—Currie.

16. Error in describing the title of a proprietor creating a *Patní*, does not vitiate the lease. *Khajah Alimoollah* v. *Gour Chundur Pal and others.* 29th Aug. 1850. S. D. A. Decis. Beng. 450.—Dick, Barlow, & Colvin.

4. *Talook.*

17. A certain *Talook* fell into balance: the Collector issued the usual notice of his intention to farm the estate, should the *Zamíndárs* fail to pay in their balances; and, as they failed in so doing within the period notified, he received the balances from the plaintiff, and granted him a lease of the estate for ten years; the Sudder Board of Revenue conditionally sanctioned the lease; but they afterwards annulled it, and ejected the plaintiff from the estate, and the order of amendment was upheld by the Government. The plaintiff sued the Board of Revenue for possession of the estate, and *Wásilát* from the date of his ejectment, but his claim was disallowed; and it was held, that the Collector could not grant such lease without the sanction of the Government.[1] *Board of Revenue* v. *Bell.* 8th Jan. 1849. 4 Decis. N. W. P. 1.—Tayler, Thompson, & Cartwright.

18. The sanction of Government to such a lease is necessary, and it is immaterial whether this be first obtained, or the arrangement be subsequently sanctioned. *Ibid.*

19. Held, that the waiver by Government of their right of interference, and the authority given by them to the Sudder Board of Revenue, by their letter of the 5th June 1832, to grant leases for ten years, does not extend to the North-western provinces.[2] *Ibid.*

20. The existence of a *Talookdárí* tenure at the time of the permanent Settlement is not a sufficient ground for its continuance, in the absence of proof that it had been held at a fixed *Jama* for twelve years before that time. *Kashee Chundur Raee and others* v. *Noor Chundra Dibeea Chowdrain and another.* 18th April 1849. S. D. A. Decis. Beng. 113.—Dick, Barlow, & Colvin.

21. The appearance of a *Talook* in the Collectorate Papers as existing prior to the decennial Settlement, without other proof, confers no title to hold in perpetuity. *Bhyrub Inder Nurain Raee* v. *Roopchundur Shah and others.* 31st Dec. 1849. S. D. A. Decis. Beng. 488.—Barlow, Colvin, & Jackson.

5. *Mukarrarí.*

22. A *Mukarrarí* tenure, which is the *Mukarrarídár's Zamíndárí* right, is of the nature of those contemplated by Sec. 15. of Reg. VII. of 1799, and is transferable under

[1] The Board granted the plaintiff this lease "subject to the confirmation of Government;" but the Commissioner, in transmitting the order, omitted to notice this condition. It appeared from the proceedings that the Collector, when he applied for sanction of the lease, considered he was acting under Act I. of 1841, and that, on the receipt of the Commissioner's letter, he granted an unconditional lease. But as Act I. of 1841 has only reference to the transfers of portions of estates, it was clearly inapplicable to the present lease, which, being for an entire estate, falls under the provisions of Reg. IX. of 1825. The Court observed—"The respondent (plaintiff) has doubtless been misled by the errors of the Commissioner and of the Collector, but this cannot give him a right to the farm."

[2] See Circular Order of the Sudder Board of Revenue dated the 14th June 1844.

that law; and the sale of such a tenure, on balance accruing, can only be made publicly by the Government officers under Cl. 7. of Sec. 15. of Reg. VII. of 1799, and Act. VIII. of 1835. *Ranee Chundra Bullee Kowaree* v. *Ranee Kummul Kowaree and others.* 9th July 1846. S. D. A. Decis. Beng. 268.—Tucker, Reid, & Barlow.

23. In a suit for possession of a *Mukarrarí* tenure and mesne profits for ten years, the claim to mesne profits was rejected because the tenant was not ousted, having left of his own accord; but the tenure was decreed because the landlord had neglected to enforce the law in regard to defaulting under-tenants, according to Reg. VII. of 1799. *Bydenath Biswas* v. *Hurkalee Bideeah.* 9th Feb. 1847. S. D. A. Decis. Beng. 49.—Dick.

24. The plaintiffs were proprietors of certain *Nánkár* lands, forming the subject of dispute; the defendants were *Mukarrarídárs.* The lands were resumed by the Government officers; and, as the plaintiffs did not appear at the time of Settlement, engagements were entered into with the defendants. Plaintiffs sued to have themselves recognised as the parties entitled to enter into engagements with the Government to obtain possession of the lands, and for mesne profits from the date of Settlement. It appeared that defendants first got their *Mukarrarídár* tenure from the *Máliks* and *Nánkárdárs* more than one hundred and seventy-two years previous to the institution of the suit, under an original grant, containing no conditions as to the continuance or otherwise of plaintiffs' *Nánkár,* and that deed was confirmed by another, which, however, shewed some ambiguity on the point. Held, that the second deed did not affect the essential conditions of the first, and that the defendants could not be ousted by the plaintiffs as *Máliks.*[1] *Phekoo Chowdhree and others* v. *Nurain Singh and others.* 1st March 1849. S. D. A. Decis. Beng. 47.—Dick & Barlow. (Colvin dissent.)

25. As a general rule, a *Mukarrarí* lease granted by a *Lákhirájdár* falls in, and becomes void on the resumption of the *Lákhiráj* tenure. *Mohunt Sheodass* v. *Bibi Ikram and another.* S. D. A. Decis. Beng. 167.—Jackson & Colvin.

LANDLORD AND TENANT.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 2.

I. In the Supreme Courts.

1. *A* let certain premises to *B,* who erected removable trade-fixtures. *C* succeeded *B* as tenant. Before, and at the termination of *B*'s tenancy, the trade-fixtures (*inter alia*) were under seizure by the Sheriff at the suit of a creditor of *B, scil. C.* Held, in an action against *C* for conversion of the fixtures, that no presumption arises of the property in them having passed to the landlord *A. Oakes* v. *Gooroochurn Poramanick.* 19th Jan. 1846. Montriou, 21.

II. In the Courts of the Honourable Company.

2. Where the defendant and his

[1] Mr. Dick considered the defendants to be *Istimrárdárs,* such as are mentioned in Sec. 19. of Reg. VIII. of 1793, and that they must be considered as *Potta Talookdárs.* Sir R. Barlow thought that the second deed should be construed in their favour, under the circumstances of long possession, and the Settlement made with them on the resumption of the *Nánkár* tenure, the *Málik Nánkárdár* not appearing; and he concluded that they had obtained a prescriptive right to remain in possession.

ancestors had occupied a dwelling situated on the plaintiff's land for a hundred years, such long continued possession was held not to give the defendant a particular or permanent right of occupancy, or to prevent his ejectment by the plaintiff, as it appeared that he was merely a tenant on sufferance of the plaintiff, his landlord, the account of rent having been altered by the latter during the last ten years, and there being no proof of any special agreement entered into at any time by the parties or their ancestors. *Nurput Singh* v. *Nathoo Ram.* 8th Aug. 1848. 3 Decis. N. W. P. 282.—Cartwright.

3. The plaintiff brought a suit, as proprietor of a certain *Bázár*, for possession of certain land in the *Bázár*, and for the ejectment of the defendant, and the removal of the materials of his house therefrom, in consequence of his refusal to pay rent. The Court observed, that, to support such a claim, proof was requisite of the defendant's being either a tenant-at-will, or a holder of a lease under specified conditions, or of an engagement having been entered into between the parties for vacation of the ground, as a penalty, in default of payment of rent; but that as no proof of the kind was offered, and the plaint commenced with a statement that the defendant and his predecessors had occupied the ground for the last seventy years, that no conditions were even declared to have been annexed to occupancy; and, moreover, that the plaintiff had his remedy in law for the recovery of any rent that could be proved to be due; it was held, that a permitted tenancy for so long a period could not be disturbed without sufficient reason in equity, or local usage; and in the absence of such reason the plaintiff's suit was dismissed with costs. *Bukshoo* v. *Ilahee Buksh Khan.* 23d Sept. 1850. 5 Decis. N. W. P. 365.—Begbie, Deane, & Brown.

LEASE.

I. Generally, 1.

II. Who may grant, 7.

III. Who may not grant, 10.

IV. Lease in perpetuity, 13.

V. Lease by way of Mortgage, 14*a*.

VI. Mukarrarí. — See Land Tenures, 22 *et seq.*

VII. Patní. — See Land Tenures, 14 *et seq.*

VIII. Talook. — See Land Tenures, 17 *et seq.*

IX. Enhancement of Rent.— See Assessment, 27 *et seq.*

I. Generally.

1. The lease of a dwelling-house is not voided by the sale of the estate on which it is situated, though the bill of sale did not exclude such house from the purchase. *Rajaram Ajhooree* v. *Baboo Huruknarain Sing and others.* 27th May 1847. S. D. A. Decis. Beng. 174.—Tucker.

2. A plaintiff, having sued for possession of certain lands under a farming lease granted to his servant, asserting that he was the real farmer, was nonsuited, there being nothing on the face of the document to shew that he, the plaintiff, had any interest in it. *Tara Soondree Chowdrain* v. *Loknath Moitre.* 6th April 1848. 7 S. D. A. Rep. 481.—Jackson, Hawkins, & Currie.

3. Land assigned rent-free, in lieu of wages for services prospectively, was leased by the assignee to third parties. On the death of the assignee the lessees refused to restore the land to the assignor. Held, with reference to the conditional tenure of continued service under which the assignee held the contested property, and to his death, and the consequent discontinuance of the service which was agreed to be rendered by him

for his occupancy, that the lease was beyond his legal competence to grant. *Jankee Raee and another* v. *Deriao Kandao and another*. 8th June 1846. S. D. A. Decis. Beng. 215.—Rattray, Tucker, & Barlow.

4. A lease by a servant, who held in lieu of wages, ceases upon the dismissal of such servant. *Baboo Ramruttun Raee* v. *Russell and others*. 8th April 1848. S. D. A. Decis. Beng. 303. — Tucker, Barlow, & Hawkins.

5. *A* sued *B* for possession of certain lands, under a lease granted by *C*. This lease was given before the expiration of a former lease in farm from *D*, deceased, husband of *C*. *B* pleaded the purchase of the disputed land at a sale by the Collector, in execution of a decree passed in favour of *E* against *D*. In the action brought by *E*, as above, *C* had appeared as a claimant, by right of inheritance and possession, to the estate of *D*, who had deceased. The Principal Sudder Ameen, without passing any order in favour of or against her claim, decreed against the entire estate of *D*. Held, that as *C* had neglected to appeal against the decree of the Principal Sudder Ameen, it was final *quoad* her rights, and that her silence must be held to bind her, and consequently her lessee *A*, whose claim was dismissed with all costs. *Gobind Purshad* v. *Syud Gholam Nujuff*. 31st July 1849. S. D. A. Decis. Beng. 315. —Barlow, Colvin, & Dunbar.

6. A party holding from the donor of a *Potta* cannot question such *Potta*. *Radhamohun Sirkar* v. *Sheikh Hari Muleh and others*. 6th Sept. 1849. S. D. A. Decis. Beng. 384.—Dick, Barlow, & Colvin.

II. Who may grant.

7. A manager of an estate, appointed under Sec. 26. of Reg. V. of 1812, and Reg. V. of 1827, is competent to grant a farming lease of any part of the property under his charge.[1] *Sheikh Emaum Buksh* v. *Sheikh Enayut Ali*. 12th Aug. 1846. 7. S. D. A. Rep. 277.—Reid, Dick, & Jackson.

8. Proprietors of land in the province of Benáres may grant *Pottas* for any period, under Sec. 2. of Reg. V. of 1812, even though beyond their engagements with Government, that Regulation being unrepealed, and the provisions of Act. XVI. of 1842 not applying to the province of Benáres. *Ramsurn Suhae* v. *Bisheshur Gir*. 25th March 1847. 2 Decis. N. W. P. 70.—Tayler, Thompson, & Cartwright.

9. In a suit for the annulment of a lease under the provisions of Reg. XIV. of 1812; it was held, that, as Act. XVI. of 1842 modifies Reg. XIV. of 1812, leases may, under that Act, be granted by *Zamíndárs* and proprietors of land for any period not exceeding their engagements with Government. *Beharee and another* v *Ajoodeah Purshad*. 15th June 1847. 2 Decis. N. W. P. 178.—Tayler, Begbie, & Lushington.

III. Who may not grant.

10. Where a party held lands on a conditional tenure of continued service, and executed a lease of such lands on an advanced rent, and died; it was held, that such lease was beyond his competency to grant. *Jankee Raee and another* v. *Deriao Kandao and another*. 8th June 1846. S. D. A. Decis. Beng. 215.—Rattray, Tucker, & Barlow.

11. A lease granted by only one of two joint proprietors is invalid. *Jugbundhoo Kauzee Lal* v. *Ram Nurain Raee and others*. 15th April 1848. S. D. A. Decis. Beng. 328.—Tucker, Barlow, & Hawkins.

12. A receiver, appointed to collect

[1] This decision declares the *legal* competency of the manager to grant such lease, but was not intended by the Court to interfere with, or abridge, the general control of the revenue authorities over managers of estates appointed by them.

rents upon an attachment, is not competent to grant leases which shall be binding upon the proprietor when his estate is restored to him. *Sheikh Gholam Nubbee* v. *Sheikh Khoda Buksh.* 21st March 1850. S. D. A. Decis. Beng. 62.—Dick, Barlow, & Colvin.

IV. Lease in perpetuity.

13. The permanence (*Istimrár*) of a *Mukarrarí Istimrárí Potta* has reference only to the term of existence of the grantee; and to render it hereditary the addition of '*bá farzandán*' (including children or descendants), or *Naslun baad Naslun* (from generation to generation), is necessary. *Baboo Toolsee Nurain Suhàee and others* v. *Baboo Modnurain Singh.* 8th Aug. 1848. S. D. A. Decis. Beng. 752.—Rattray.

14. A perpetual lease of resumed lands, made by a party who has, before the granting of such lease, applied, as being the person entitled of right to a proprietary settlement for the lands, is, when made by such party with distinct reference to, and in application of, his being admitted to the settlement, valid after he has obtained the settlement, although he was temporarily out of possession of the lands at the time of granting the lease. *Butook Singh and others* v. *Akasee Koonwur and others.* 5th Dec. 1850. S. D. A. Decis. Beng. 562.—Dick, Barlow, & Colvin.

V. Lease by way of mortgage.

14*a*. Where a party incurs a loan, and, as a security for the debt, gives his lands in farm to the lender for a certain term, he is entitled to recover his property before the expiration of such term, provided that on an investigation of the amount realized by the lender (lessee) it should appear that the principal, with interest at the legal rate, has been paid off, as the law cannot recognise any engagement which gives to the lender a higher sum than such principal and interest combined. *Hurlal Singh* v. *Shewa Mehtoon and others.* 17th May 1848. S. D. A. Decis. Beng. 454.—Tucker, Hawkins, & Currie.

15. A lease having been given upon the receipt of a money advance, or *Péshgi*, with the condition that the lessee, who made the advance, was to remain in possession till the repayment of its principal amount, but was to pay a fixed annual rent to the lessor, appropriating all the profits after payment of such rent; a suit was brought by the lessee to recover the principal advance, on the ground that he had been dispossessed of the land by the lessor without the sum having been made good to him. Held, that it was proper, in such a suit, to set against the claim for the principal advance all the amount of the fixed reserved rents, due for any term not above twelve years, which the lessee had failed to pay to the lessor, with interest thereon; and that it was not necessary to inquire, for any purpose, as to the amount of the profits realized, after allowing for the reserved rents, by the lessee while in possession. *Bibi Roufun and others* v. *Sheikh Majum Ali and others.* 16th May 1850. S. D. A. Decis. Beng. 205.—Dick, Jackson, & Colvin.

LEGACY.—See Interest, 1; Will, *passim*.

LIBEL.—See Defamation, *passim*.

LIEN.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourabe Company, 2.

I. In the Supreme Courts.

1. The Court, sitting in equity, will not make a declaration of a lien, which is properly triable at law.

Stalkartt v. *Mackey and others.* 6th July 1846. Montriou, 227.

II. In the Courts of the Honourable Company.

2. Property pledged to satisfy an eventual judgment of a *Mofussil* Court, was subsequently mortgaged to another party, sold by the Sheriff of Calcutta in execution of a judgment in an action on the mortgage bond obtained in the Supreme Court, and possession thereof given under a judgment of a Zillah Court. Held, that the lien of the decree-holder, to satisfy whose claim the property was originally pledged, was not affected thereby. *Gour Soondree Gosayn, Petitioner.* 12th Sept. 1836. 1 S. D. A. Sum. Cases, Pt. i. 11.—Braddon & D. C. Smyth.

LIFE INSURANCE.—See Insurance, 1.

LIMITATION OF ACTIONS AND SUITS.

I. Hindú Law, 1.

II. Statute of Limitations, 2.

III. In the Courts of the Honourable Company, 5.

1. *Generally*, 5.
2. *Exceptions from*, 35.
3. *Acknowledgment in bar*, 62.
4. *Deductions from the time*, 68.
5. *As to Infants*, 76.
6. *Time of commencement of period*, 87.
7. *Time of conclusion of period*, 128.
8. *Special Rule*, 131.
9. *Practice*, 139.
10. *As to redemption of Mortgages.*—See Mortgage, 53 *et seq.*
11. *As to execution of Decrees.*—See Practice, 307.

I. Hindú Law.

1. Semble, by the Hindú law there is no limitation to actions on simple contract. *Beerchund Podar* v. *Ramnath Tagore and others.* 10th Dec. 1849. 1 Tayler & Bell, 131.

II. Statute of Limitations.

2. The Statute of Limitations is pleadable in the Supreme Court by Hindús.[1] *Beerchund Podar* v. *Ramnath Tagore and others.* 10th Dec. 1849. 1 Tayler & Bell, 131.

3. And semble, it is the only applicable bar. *Ibid.*

4. A plea that the causes of action did not accrue within ten years is bad, on special demurrer, as not following the statutory bar. *Ibid.*

4 *a.* The Statute of Limitations 21 Jac. I. c. 16. extends to India. *The East-India Company* v. *Oditchurn Paul.* 6th Dec. 1849. 7 Moore, 85.

4 *b.* The Statute 9 Geo. IV. c. 14. (extended to India by Act XIV. of 1840), was held to apply to an action pending in the Supreme Court at Calcutta at the time of its introduction into India. *Ibid.*

4 *c.* In assumpsit, the breach of a contract is the cause of action, and the Statute of Limitations runs from the time of the breach, and not from the time of the refusal to perform the contract. *Ibid.*

4*d.* In 1822, *A* purchased at a Government sale in Calcutta a quantity of salt, part of a larger portion then lying in the warehouse of the vendors (the Government), where the salt was to be delivered. By the conditions of sale, it was declared, that on the payment of the purchase-money the purchaser should be furnished with permits to enable him to take possession of the salt: there was also a stipulation that the salt purchased should be cleared from the place of delivery within twelve

[1] And see Vol. I. of this work Tit. Limitation Pl. 12 *et seq.*

months from the day of sale, otherwise the purchaser was to pay warehouse-rent for the quantity then afterwards to be delivered. The purchaser paid the purchase-money, and received the permits for the delivery of the salt, which was delivered to him, in various quantities, down to the year 1831; in which year an inundation took place, which destroyed the salt in the warehouse, and there remained no salt to satisfy the contract. The purchaser petitioned the vendors for a return of the purchase-money, which was refused, on the ground that the loss happened through his negligence in not sooner clearing the salt from the warehouse. An inquiry, however, took place, at the instance of the Government, who referred the matter to the Salt Collector for a report. This inquiry was made by the Government without the purchaser being a party to it. The Collector did not make his report until the year 1838, and, upon that report, the Government refused to return the purchase-money claimed in respect of the deficient salt. The purchaser then brought an action of assumpsit for the recovery of the purchase-money of such part of the salt as had not been delivered, alleging, as a breach, the non-delivery thereof. To this the defendants pleaded the Statute of Limitations, that the cause of action had not accrued within six years before the commencement of the suit. The Supreme Court at Calcutta found a verdict for the plaintiff. Held, upon appeal, reversing such verdict, that when the purchaser applied for the residue of the salt, and was told that there was none to deliver, the contract was broken, and the cause of action accrued from the time of such breach; and that the subsequent inquiries by the Government did not suspend the operation of the Statute of Limitations, till the year 1833, the time of the final refusal, and that the remedy was barred by the Statute. *Ibid.*

4 *e.* Semble, there may be an agreement, that in consideration of an inquiry into the merits of a disputed claim, no advantage should be taken of the Statute of Limitations, in respect of the time employed in the inquiry, and an action might be brought for a breach of such agreement. *Ibid.*

III. In the Courts of the Honourable Company.

1. *Generally.*

5. The plaintiff sued to set aside a settlement made by the Revenue authorities with the defendants, and to establish his right as *Zamíndár.* The Goverment farmer of 1197 *Faslí* died in 1206 *Faslí*, and a farming settlement was made by the Collector with his heirs. The plaintiff had not therefore had his *Zamíndárí* title acknowledged; and as a period of more than twelve years had elapsed since the death of the first farmer, the Court declared that the plaintiff could not come into Court to establish a *Zamíndárí* title. Anon. 19th Sept. 1844, quoted in 5 Decis. N. W. P. 353.—Full Court.

6. The rules of a positive enactment were held to supersede the tenets of the Hindú law; and a claim to recover possession of property, founded upon adoption, which had been postponed beyond twelve years, was dismissed. *Ranee Chunder Monee* v. *Rajah Birjnath Singh and others.* 20th March 1845. 7 S. D. A. Rep. 194.—Tucker, Reid, & Barlow.

7. Lands sued for, having been, under a *Butwárá*, by consent of the plaintiff, in adverse possession of the defendants for many years, and their occupancy by them acknowledged and upheld by the Courts for a long period, one of the Judges considered the plaintiff's claim barred by the rule of limitations. *Ishor Chunder Podar* v. *Aulim Chunder Podar.* 24th April 1845. S. D. A. Decis. Beng. 125.—Barlow.

8. Possession of lands under a *Hibeh námeh* for more than twelve years, was held to bar a claim for such lands, though the *Hibeh námeh* was not signed by witnesses. *Chundernarain Rai and another* v. *Narainee Dasseea and others.* 28th Feb. 1846. S. D. A. Decis. Beng. 82.—Jackson.

9. Certain portions of an estate were decreed to the appellant in two separate suits. In neither of these suits was any mention made of *Wásilát,* for which the appellant afterwards sued. In the mean time the lands had been sold. The cause of action being carried back twenty-eight years, the Court held, that Sec. 6. of the Circular Order No. 29. of the 11th Jan. 1839, was applicable to the case, and gave a decree only for the period between the institution of the first suit and the sale of the lands. *Kunhya Pandee and others* v. *Gourdut Pandee and others.* 24th March 1846. S. D. A. Decis. Beng. 123. —Rattray.

10. A claim for lands of *A*, by *B* his nephew, against *C* his adopted son, who had been in quiet possession for twenty-five years, was held to be barred by the rule of limitation.[1] *Fuqeer Chund* v. *Neokee and others.* 27th March 1846. S. D. A. Decis. Beng. 125. — Rattray.

11. The presentation of a mere miscellaneous petition (under which category a petition *in formâ pauperis* is obviously classed) is not to be considered "a preferring of a claim to a Court of competent jurisdiction," so as to bar the operation of the law of limitation.[2] *Sohun Lall and another* v. *Brij Lall.* 29th June 1846. 1 Decis. N. W. P. 55.—Thompson, Cartwright, & Begbie. *Sheikh Amanut Ali and another* v. *Sheikh Bukshun.* 27th May 1850. 5 Decis. N. W.P. 85.—Begbie, Deane, & Brown.

12. In a suit for lands, &c., which had been in the possession of the defendant more than twelve years; it was held, that the plaintiff's being absent at Madras in official employ was not a sufficient reason for his not having sued sooner, so as to take the case out of the rule of limitation under Sec. 14. of Reg. III. of 1793. *Majdah Beebie* v. *Seiud Kulundur Bukhsh.* 22d June 1846. S. D. A. Decis. Beng. 238.—Dick.

13. The claim of a *Zamíndár* for *possession* of lands, cultivated by a party without distinct title, is subject to the ordinary law of limitation. *Maha Rajah Nowul Kishoor Singh* v. *Achumbit Raee and others.* 15th Sept. 1846. S. D. A. Decis. Beng. 358.—Rattray, Tucker, & Barlow. *Mirtinjoy Pauree and others* v. *Omesh Chundur Paul Chowdhree.* 31st Oct. 1849. S. D. A. Decis. Beng. 411. — Barlow & Colvin. (Dick dissent.)

14. A mere application from time to time to the Collector for permission to engage for an estate, does not exempt the applicant from the law of limitation in regard to a claim to have a settlement of such estate, made more than twelve years previously, annulled, and engagements taken from him as the rightful proprietor. *Puhloo Singh and others* v. *Sheo Dutt Singh and another.* 11th Jan. 1847. 2 Decis. N. W. P. 4.—Tayler, Thompson, & Cartwright.

15. Where parties had accepted certain lands in lieu of others, and above twelve years had elapsed since the arrangement was effected; it was held, that, under Construction No. 942, a claim to set aside that arrangement was inadmissible. *Goordutt Chowdhree and another* v. *Munooruth Chowdhree and others.* 25th Jan. 1847. S. D. A. Decis. Beng. 21.—Rattray, Dick, & Jackson.

16. In a question of title to certain family idols, the plea of fraud was urged, as taking the case out of the

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[1] See the case of *Zorawur Sing and another* v. *Zor Sing and others.* 4 S. D. A. Rep. 87.

[2] See Construction No. 813.

ordinary rule of limitations under the provisions of Sec. 3. of Reg. V. of 1805; but such plea was set aside, the claim not being for "permanent immovable property." *Ram Kunnye Pal* v. *Sheeb Chundur Pal.* 4th Sept. 1847. S. D. A. Decis. Beng. 512.—Tucker, Barlow, & Hawkins.

17. In calculating the period of limitation, no allowance is to be made for the time during which an application to sue *in formâ pauperis* is pending in the Court.[1] *Sheikh Asudoollah* v. *Sukheena Khanum.* 22d April 1848. S. D. A. Decis. Beng. 360. — Tucker, Barlow, & Hawkins.

18. And the circumstance that the petition to sue as a pauper and the petition of plaint have been written together, so as to form one document, makes no difference, for it can have no effect as a plaint until the applicant has been authorised to present one. *Abdur Ruheem* v. *Dilawur Ali and others.* 18th Dec. 1849. S. D. A. Decis. Beng. 466.—Barlow, Colvin, & Dunbar.

19. The period during which an inquiry into the fact of the pauperism of a plaintiff is going on ought not to be deducted in calculating the time, the lapse of which raises a bar by limitation. *Chuttur Dharee Lal* v. *Bikaoo Lal.* 11th June 1850. S. D. A. Decis. Beng. 282.—Barlow, Jackson, & Colvin.

20. A claim to lands in possession of others for more than twelve years must be preferred on some specific legal enactment, or distinctly grounded on allegation of fraud. *Wise and others* v. *Kunnya Lal Thakoor and another.* 16th Sept. 1848. S. D. A. Decis. Beng. 822.—Dick.

21. The deposit of a mortgage deed is not a deposit of the nature specified in Cl. 4. of Sec. 3. of Reg. II. of 1805, so as to be excepted from the law of limitation. *Bishnath* v. *Seetul Misr.* 26th March 1849. 4 Decis. N. W. P. 63.—Tayler, Thompson, & Cartwright.

22. A title founded on an alleged gift by a Hindú widow was held not to be such as, when held by inheritance for more than twelve years, is declared to be complete by Cl. 1. of Sec. 3. of Reg. II. of 1805. *Kutteeanee Dassee* v. *Nund Kishwur Ghose.* 5th April 1849. S. D. A. Decis. Beng. 102.—Dick, Barlow, & Colvin.

23. The recognition under an arbitration award of the right of a party to a specified quantity of *Sír* land, free of rent, is not sufficient to bar the operation of the law of limitation in a suit for *Zamíndári* and *Patídári* rights. *Mt. Chubbee* v. *Motee Singh.* 17th April 1849. 4 Decis. N. W. P. 85.—Thompson.

24. Deed of sale dated in 1829. In 1838 the Collector referred the purchasers (plaintiffs) to a regular suit to establish their rights. Held, that this did not take the case out of the rule of limitation. *Teel Konwur and others* v. *Omrao Singh and others.* 19th April 1849. S. D. A. Decis. Beng. 120.—Dick, Barlow, & Colvin.

25. The period during which a suit is pending, which is finally struck off for default, does not prevent lapse of time under the law of limitation. *Chubbeenath Dhobee and others* v. *Ruhmut Ali Khan.* 5th July 1849. S. D. A. Decis. Beng. 269.—Dick, Barlow, & Colvin.

26. If a decree-holder apply for execution in the usual way, and suffer twelve years to elapse without taking proceedings to enforce that application, the law of limitation will be applied to any fresh suit he may institute, after the twelve years, to obtain execution of his decree. *Ibid.*

27. Where, in a claim for a house and land, it did not appear by evidence that the plaintiff had exercised any right or title to the pro-

[1] And the same point was decided in *Sheik Sufdar Allee* v. *Dutnerain*; *Lopes* v. *Chowdree Bheem Sing*; and *Rahm Khan* v. *Bikram Samee.* See Vol. I. of this work, Tit. LIMITATION, Pl. 53. 55; and see *supra*, Pl. 11.

perty in dispute, in any one way, for twelve years, and produced no documents whatever in snpport of her asserted title, whereas it was admitted by all the witnesses, and by the plaintiff herself, that the defendant had lived in the house from the day on which it was built, the claim was disallowed. *Chengooram* v. *Satoo Boyee.* 16th July 1849. S. A. Decis. Mad. 20.—Thompson & Morehead.

28. Where the plaintiff's father had permitted the defendant to erect a hut within the acknowledged boundaries of his (plaintiff's) property, and the plaintiff, more than twelve years afterwards, instituted a suit to eject the defendant, the Sudder Adawlut held, that, as it did not appear that rent had at any time been paid by the defendant to keep alive the plaintiff's proprietary right to the ground, the law of limitation was strictly applicable, and the plaintiff's suit was dismissed with costs. *Valen* v. *Vulloova Santee* 13th Aug. 1849. S. A. Decis. Mad. 40.—Thompson.

29. A claim to recover lands, of which a sale was effected seventeen years previously to the institution of the suit, was held to be barred by the law of limitation. There was no proof to shew that the plaintiffs did not know of the sale, but through negligence or indifference, or doubts as to their rights, they failed to institute the suit. *Tooloóviya Shetty* v. *Coraga Shettaty and another.* 13th Oct. 1849. S. A. Decis. Mad. 75.—Thompson & Morehead.

30. A suit for *Inaám* lands was held to be barred by the rule of limitation, the lands having been assessed forty years before the institution of the suit. *Moottia Mootterien* v. *Ammaul Sreerungacharry.* 24th Nov. 1849. S. A. Decis. Mad. 122.—Thompson & Morehead.

31. A certain village was formerly held in *Maáfí* tenure, but being resumed, the Settlement thereof was made with the *Zamíndárs*, represented by the *Lumburdárs*, the defendants. The plaintiffs claimed, by descent, half the village from those members of the family who had obtained possession of the whole. Held, on proof that the defendants were in the habit of receiving certain proprietary dues to the exclusion of the other branches of the family, that their possession must be considered as adverse, and the rights of *Maáfídárs* and *Zamíndárs* being quite distinct, the plaintiffs, to preserve their interest in the latter, should have advanced their claim within twelve years from the time in which the possession of the defendants became exclusive or adverse; not having done which, their claim was barred by the law of limitation. *Tegmund Singh and others* v. *Sheopershun Singh and others.* 18th Feb. 1850. 5 Decis. N. W. P. 53.—Tayler, Begbie, & Lushington.

32. The plaintiffs in 1841 sued out execution of a decree for land obtained by them in 1833. The Courts struck the case off, declaring the decree incapable of execution. Notwithstanding this, the plaintiffs contrived to retain possession of the land for a short time, and the defendant sued to eject the plaintiffs, and a judgment was passed in his favour. Held, that their *lawful* possession was altogether contingent on the enforcement of the decree; and that any possession had through other means was a wrongful possession, and not pleadable in bar of the law of limitation in a suit brought for the same land more than twelve years from 1833. *Khawja Mirza Jaun* v. *Khawja Ahmud Hoossein and others.* 19th Aug. 1850. 5 Decis. N. W. P. 246.—Begbie, Deane, & Brown.

33. In a claim for *Zamíndárí rights,* the occupancy for twelve years, necessary to establish a right by prescription, must be an adverse occupancy of the *Zamíndárí rights,* not of a subordinate *Talookdárí* tenure. *Goorpersaud Raee* v. *Moulvee Abdool Ali and others.* 19th

Sept. 1850. S. D. A. Decis. Beng. 491.—Barlow, Jackson, & Colvin.

34. Plaintiffs laid claim to a *Mauza* as their hereditary estate; but it appearing that, during the long period from 1210 *Fasli*, when the estate was first let in farm, down to the present time, the plaintiffs had never held possession, nor had their *Zamíndári* title been acknowledged; and that, after various leases of the estate and *Kham* holdings, subsequently to 1210 *Faslí*, the Revenue authorities in 1836 settled it with the defendants as proprietors; the plaintiffs' claim was dismissed. *Ulup Rai and others* v. *Meer Sukhawul Ali and others*. 23d Sept. 1850. 5 Decis. N. W. P. 352.—Begbie, Deane, & Brown.

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2. *Exceptions from.*

35. The law of limitation does not apply to a suit for an adjustment of rents, that being a perpetually recurring demand, and therefore cause of action. *Degumber Singh* v. *Kalee Pershad Singh and others*. 26th April 1845. S. D. A. Decis. Beng. 129.—Tucker, Reid, & Barlow. *Meertinjay Shah and others* v. *Baboo Gopal Lal Thakoor*. 3d Dec. 1845. 7 S. D. A. Rep. 217.—Reid & Jackson. (Dick dissent.)[1] *Gopal Lal Thakoor* v. *Radha Madhub Banoorjea*. 20th July 1847. S. D. A. Decis. Beng. 346.—Hawkins. *Gunga Nurain Pal* v. *Bheiroo Chundur and others*. 26th Feb. 1848. S. D. A. Decis. Beng. 112. —Tucker, Barlow, & Hawkins.

36. The law of limitation does not apply to claims for rent of lands. *Jewa Singh and others* v. *Rambuksh Singh and others*. 21st July 1847. S. D. A. Decis. Beng. 275.—Rattray, Dick, & Jackson.

37. The law of limitation was held not to apply to a claim to a reduction of rent on account of diluvion, preferred during the course of diluvion; but if delayed beyond twelve years after its cessation, the claim will be barred.[2] *Mt. Shama Soondery and another* v. *Mirza Ahmud Jan and others*. 23d July 1845. 7 S. D. A. Rep. 209.—Reid, Dick, & Gordon.

38. Held, that there is no limitation of time with regard to suits by a *Zamíndár*, or one standing in the place of a *Zamíndár*, for the resumption and assessment of rent-free lands. *Ghosain Doss* v. *Gholam Moheeoodden and another*.[3] 28th Jan. 1846. S. D. A. Decis. Beng. 20.—Reid & Jackson. (Dick dissent.) *Dost Mahomed Khan Chowdry* v. *Kashee Isree Debea*. 28th Jan. 1846. S. D. A. Decis. Beng. 22.—Reid & Jackson. (Dick dissent.) *Bulram Punda and another* v. *Sheikh Gool Mohumud*. 28th Jan. 1846. S. D. A. Decis. Beng. 25.—Reid & Jackson. (Dick dissent.) *Koose Chuckerbuttee* v. *Sheikh Ghool Mohumud*. 28th Jan. 1846. S. D. A. Decis.

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[1] Mr. Dick held that the law of limitation did apply to this suit, which was a claim, not merely to assess land liable to variable rent, but to cancel a fixed rent tenure, a dependent *Talook*. And see the notes to *placita* Nos. 38, 39, *infra*.

[2] This judgment, it will be observed, only rules that a claim, although delayed beyond twelve years, diluvion the whole time proceeding, would not be barred. The question remains whether the abatement, if claimed for more than twelve years, would be allowed. It has been already decided, that in an action for arrears of rent for twenty years the plaintiff was entitled on proof to a decree for such period as was not barred by the law of limitation. *Radhamohun Ghose Chowdree* v. *Ram Chand Mustofee and others*. 7 S. D. A. Rep. 182.

[3] Mr. Dick observed in this case—"Under Reg. XIX. Sec. 11. Cl. 2. 1793, no claim to hold land rent free shall be heard in any Court of Justice, if the land has been subject to the payment of rent during the twelve years previous to the institution of the suit. The converse must therefore, in equity, be held good—that no suit for land held exempt during twelve years previous to the institution of the suit can be heard. I cannot concur in the opinion

Beng. 27.—Reid & Jackson. Dick dissent.)[1]

39. The general law of limitation is inapplicable to suits instituted by *Zamíndárs* for the resumption of rent-free lands. *Sheikh Shufaetoollah* v. *Joykishen Mookerjee and others.* 20th May 1848. 7 S. D. A. Rep. 499.—Tucker, Barlow, & Hawkins. *Muddunmohun Raee* v. *Ramnurain Banerjee.* 5th Aug. 1848. S. D. A. Decis. Beng. 743.—Tucker, Barlow, & Hawkins. *Sonutun Ghose and another* v. *Doorga Churn Dut.* 5th Aug. 1848. S. D. A. Decis. Beng. 745.—Tucker, Barlow, & Hawkins. *Sheikh Rezwan and others* v. *Gunganurain Ghose.* 16th Dec. 1848. S. D. A. Decis. Beng. 873.—Barlow, Jackson, & Hawkins.[2]

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that suits to break rent-free tenures, in other words, for resumption, are not subject to the law of limitation. It seems to me in direct contradiction to Cl. 2. Sec. 2. of Reg. II. of 1805, which subjects 'all claims on the part of Government, whether *for the assessment* of land held exempt from the public revenue without legal and sufficient title to such exemption,' &c., to the law of limitation of sixty years, and, of course, the claims of a like nature of individuals, who all hold of Government, to the law of limitation of twelve years applicable to them. There are cases, which, under Reg. XIX. of 1793, and Reg. III. of 1828, are excepted from the law of limitation. They must, however, be classed under the general head of fraudulent acquisition; all of which are excepted by Cl. 2. of Sec. 3. Reg. II. 1805. But the *onus probandi* in them all rests on the plaintiff; in the former cases, proof of the acquisition of the tenure subsequent to the year 1790; in the latter, of possession by force or fraud: for unless 'such violent or fraudulent acquisition be established to the satisfaction of the Court in which the claim may be preferred,' the claim is barred by lapse of time prescribed." I have thought it right to give Mr. Dick's reasons for his dissent at length, as Messrs. Reid and Jackson, in support of their view of the case, merely stated that it had been already held by the Court, that the neglect to demand rent for twelve years does not deprive the *Zamíndár* of the right to demand it, when he pleases to do so, but they did not give the name of the cause in which such doctrine was propounded. See note 2 *infra.*

[1] Mr. Dick, in all these cases, considered that the rule of limitation applied, for the reasons given in the preceding note.

[2] The elaborate judgment in the case of *Shufaetoollah* v. *Joykishen Mookerjee* is worthy of especial consideration: the subsequent cases were decided merely by reference to it as an authoritative precedent. I have separated these cases from those ranged under the previous *placitum*, because in those Mr. Dick recorded his dissent, whereas in these the Court were unanimous. Until the year 1840 it was the practice to consider that the general law of limitation did not apply to such cases. Two cases were decided to that effect, the one *Sookdeb Chowdhree and others* v. *Chadee Lal*, on the 2d July 1836, and the other, *Becharam Mundul* v. *Gungagovind Mundul and others*, on the 26th Dec. in the same year: these have not been reported. Since 1840 conflicting judgments have been passed, according to the opinions of the deciding judges. In 1846, however, four cases, (see Pl. 38 *supra*) were decided, from which it would appear that the tendency is to revert to the practice as it existed before 1840. I may add, that, in the judgment in *Shufaetoollah's* case, the Court remarked, "The inapplicability of the law of limitation to such cases may be further inferred from the practice which prevails in regard to *Mocurruree* tenures. The *Lákhirajdár* pays no rent at all: the *Mocurrureedar* pays a privileged, or, it may be, a small quit rent. Now, looking at these two cases *merely* with reference to the rules of limitation, there is no reason why the *Lákhiráj* tenure should be unassailable twelve years after the cause of action, and the *Mocurruree* tenure should be resumeable and assessable at a higher rate after the same period. The rules of limitation have never been applied in practice to *Mocurruree* tenures: and upon a recent occasion (see case of *Meertinjoy Shah* v. *Baboo Gopal Lal Thakoor*, 7 S. D. A. Rep. 217; also that of *Khájah Neekoos Marcar* v. *Ram Lochun Ghose.* 3 S. D. A. Rep. 221), when the subject was considered at large by the Court, the opinion was recorded, that the claim to assess, being a perpetually recurring cause of action, cannot be barred by lapse of time; and this opinion was adopted by the majority of the Court. The same principle appears to us to be applicable to a *Lákhiráj* tenure. In the case of a *Mocurruree* tenure, the *Zemíndár* sues for a higher rent where he got some rent: in the case of a *Lákhiráj* tenure, he sues for some rent where he got none. The claim in both cases is to *assess;* and there is no reason why the principle which has

40. And such suits may be brought at any time by *Zamíndárs* or *Patnídárs*.[1] *Rajkishore Raee* v. *Soomer Mundul and others.* 15th Mar. 1849. S. D. A. Decis. Beng. 66. —Jackson.

40*a*. The right of Government to institute proceedings by or before the Revenue Collector, under the Bengal Reg. II. of 1819, for the resumption of lands for the purpose of assessment to the public revenue, is barred by Cl. 2. of Sec. 2. of Reg. II. of 1805, after the lapse of sixty years from the cause of action. So held, by the Judicial Committee of the Privy Council, on appeal from a decree made by the Special Commissioner upon a claim by Government, where *Moheteran* lands were held as *Lákhiráj* by the Rájah of Burdwán, before the Company's accession to the *Díwání* in 1765, and no claim had been made by Government to resume the lands for assessment till the year 1836.[2] *Maha Raja Dheeraj Raja Mahatab Chund Bahadoor* v. *The Government of Bengal.* 18th Feb. 1850. 4 Moore Ind. App. 466.

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been applied to the one case should not be applicable to the other."

[1] This decision is the same in fact as those given in the preceding *placita*. I have placed it by itself merely because it expressly includes *Patnídárs* as exempt from the rules of limitation of Reg. III. of 1793, when suing to resume *Lákhiráj* lands. And see Tit. PATNÍDÁR, Pl. 7. 9. 11.

[2] On the 6th Dec. 1849 Baron Parke, before giving judgment in this case, stated that he had looked through the Regulations bearing upon the law of limitation, and handed in the following paper to Counsel—

"Another objection was taken to the right of the respondent to have the villages in question assessed, viz. that sixty years had elapsed since the respondent had that right, and that it was barred, therefore, by the Reg. II. of 1805, Sec. 2. Art. 2.

"This objection was not mentioned in the Indian Courts, nor in the printed cases in appeal. It was brought forward for the first time on the argument before us, which creates a strong presumption against its validity.

"The Regulation is as follows—'All claims on the part of Government, whether for the assessment of land held exempt from the public revenues, without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or for any other public right whatever (the judicial cognizance of which may not have been otherwise limited by some special rule or provision in force), shall be heard, tried, and determined in the several Courts of Civil Justice to which the cognizance thereof may properly belong, under the general Regulations which have been, or may be hereafter, enacted, if the same be regularly and duly preferred, at any time within the period of sixty years from and after the origin of the cause of action.'

"In the year 1825, on the 14th July in that year, and consequently within less than a month from the expiration of the sixty years from the 12th of August 1765, the period when the right of the Government to assess these lands first accrued, the Reg. (XIV.) of 1825 was made, which we have before mentioned, and which contains provisions requiring the strict proof which we have before stated. Now, if the claims of Government to assess all lands claimed to be *Lákhiráj*, in Bengal, Behar, and Orissa, had been supposed to be liable to be barred in a very few days, it cannot be supposed that such special and stringent enactments would have been made as to the conduct of inquiries into the validity of the claims to hold free from assessment, without any extension of time for that purpose. This argument is not conclusive, because it is only a proof that the legislative authority itself thought that there was no such bar, and that is not their province, but that of the Judicial authorities; but it induces us to feel great doubt as to the validity of the objection, now, at so late a period, brought forward.

"Upon full consideration of that and the other Regulations on this subject, we think that the claim on the part of the Government was not barred by this Regulation. By Reg. XIX. of 1793, Sec. 12., the claim to prosecute for the resumption of invalid grants was to be preferred in the Adawlut Courts: no lapse of time was to be considered as a bar to the resumption. As the law then stood, at the time the Regulation in question passed in the year 1805, there was an obligation on the officers of Government to sue in the Civil Courts, and no bar in these suits from time.

"The Regulation of 1805 made this difference, it provided that the limitation of twelve years, prescribed by previous Regulations to all suits, should not be considered as applicable to claims on behalf of the Government; and then the 2d

40*b*. The Court of the Revenue Collector and the Special Commissioner, appointed under the Bengal Regs. II. of 1819 and III. of 1828, are Courts of Civil Justice within the meaning of the Regulations of Limitation. *Ibid.*

40*c*. An objection raised the first

Article fixes the limitation of time for such claims of Government, in suits in the Civil Courts. Afterwards, other Resolutions passed which rescinded the provisions, that the Government should sue in the Adawlut Courts in order to resume or make an assessment on *Lákhiráj* lands (which suits alone are limited, by Reg. II. 1819, Sec. 2. Cl. 2.); and the proceedings are directed to be in the first instance before the Collector, subject to appeal to the Court; and afterwards, by Reg. III. 1828, to Special Commissioners, by the party grieved; and this mode of proceeding is not subject to any limitation of time whatsoever—it is only the proceeding by such, that is, whether a suit, therefore, in an Adawlut Court would have been barred, or not, by the Regulation of 1825, if the power to sue had been continued. The limitation is not applicable to the special proceedings under the Regulations of 1819 and 1825, under which the proceeding, the subject of this appeal, was taken. We think, therefore, that this objection cannot prevail."

He added, that it appeared to him that the Regulation applied only to cases where there is a power to sue in the Superior Courts, and not to a proceeding, as in this case, before a Collector. At the conclusion of the judgment, the members of the Judicial Committee observed, "There remains only to be considered a question which was raised for the first time on the argument here, upon the Regulation of Limitation: we have looked through the different Regulations, and have given information to the Counsel upon the different Regulations bearing on this point, the result of which appears to be, that there is no Regulation of limitation to a proceeding before the Collector; possibly, (though that matter is very obscure), there was one as to a proceeding in the Adawlut Courts." Their Lordships recommended the Counsel to look into the question, and mention it again: meanwhile their Lordships suspended their report. The reserved point was afterwards re-argued by one Counsel on each side, and the law of limitation was held to apply to the case chiefly on the ground of the following judgment in a case pronounced a twelvemonth after the decision of the present case in the Court below, a copy of which was produced before their Lordships by the appellant's Counsel, after the case had been argued upon the reserved point, and before final judgment was delivered. This judgment was given in No. 405 Appeal, *Lákhiráj*, and was heard before the Special Commissioner at Moorshedabad on the 31st December 1838. The case was extracted from the Calcutta Monthly Journal, Vol. V. Pt. i. p. 61: the material part relating to the operation of Sec. 2. of Reg. II. of 1805, as a bar to the claim of Government, was as follows:—"The appellants have filed a deed under seal of the *Khálisah*, or *Dîwani*, and the signature of the President of the Committee of Revenue, H. Cotterell, proving possession of the *Lákhiráj* land, dated the 5th July 1775, and which had been duly registered and countersigned by H. Vansittart, Persian translator to that office. The period limited by the Regulation now in force for prosecution, in such cases, on the part of Government, ended, and the right to institute a suit to assess the land lapsed, on the 5th July 1835; whereas this prosecution was not commenced until the 16th Sept. 1836, or fourteen months and eleven days after the expiration of the limitation fixed by Reg. II. of 1805. The Government pleader wished to make the institution of the suit date from the 1st May 1793, that is to say, from the institution of Reg. XIX. of 1793; but this cannot be admitted. Reg. XIX. of 1793 was not the commencement of a suit to be 'heard,' tried, and determined; but the enactment of trying the validity of claims, and declaring what should be valid and what invalid; and that Regulation, moreover, contained a Section (12.) especially providing that no period of limitation shall bar the claim of Government; but this section has been repealed by Cl. 2. of Sec. 2. of Reg. II. of 1819, and since which it is no longer 'in force,' as required by Cl. 2. of Sec. 2. of Reg. II. of 1805; from the time of which enactment the limitation of sixty years by the latter regulation for Government claims comes into force generally instead of it, takes its place, and cannot be set aside for the benefit of the revenue, any more than the bar of twelve years could be set aside for the benefit of a private individual. Now, the cause of action in this case is the nonpayment of revenue. This bar existed more than sixty years at the time the first notice in this case was served: the limitation fixed has been passed, and the claim has lapsed. I therefore reverse the Collector's decision."

It must be observed, that none of the cases noted in the preceding *placita*, shewing the practice of the Courts in India with regard to the application of the law of limitation

time at the hearing of an appeal before the Privy Council, that the right of Government to sue was barred by the law of limitation (Beng. Reg. II. of 1805), was sustained; the proceedings in India before the Revenue Collector and Special Commissioner, under Regs. II. of 1819 and III. of 1828, not being in the nature of a regular suit. *Ibid.*

41. Where money was advanced on a deed or *Potta*, which stipulated for possession of the lands leased till the advance was satisfied, and under which stipulation possession was held unopposed by the lenders for more than twelve years, until they were ousted in consequence of the sale of the estate for arrears of revenue before the debt was satisfied; it was held, that the law of limitation did not bar a suit to recover the money. *Ram Pershad Chowdhree and others* v. *Jafur Hosein Khan and others.* 17th March 1846. S. D. A. Decis. Beng. 105.—Rattray. *Mt. Raoofun and others* v. *Sheikh Moazum Ali and others.* 27th July 1848. S. D. A. Decis. Beng. 722. —Rattray.

42. Government being the claimants in a suit, it is not barred by a lapse of twelve years from its origin. *Muhesh Chunder Dass* v. *Salt Agent on the part of Government.* 15th Dec. 1846. S. D. A. Decis. Beng. 420.—Dick.

43. In a suit for rents for a period commencing twenty years before institution, the claim for the period not affected by the law of limitation is not liable to dismissal.[1] *Kashee Kunth Banerjee and another* v. *Roob Chunder Chowdry and others.* 28th Jan. 1847. S. D. A. Decis. Beng. 29.—Reid.

to the resumption of rent-free tenures, were brought under their lordships' notice. These cases, however, throw considerable light upon the subject.

[1] The same point was decided in the case of *Radhamohun Ghose Choudree* v. *Ram Chand Mustofee and others*, 7 S. D. A. Rep. 182.

44. The operation of the rule of limitation with regard to a bond, is barred by the execution of a fresh security. *Bhudoo Raoot* v. *Hurbuns Roy and another.* 22d June 1847. S. D. A. Decis. Beng. 277. —Tucker.

45. Where certain parties had contentedly held *Sír* land in an estate for upwards of twelve years; it was held, that the holding of such *Sír* lands did not interfere with the right of the holders to sue for the *Zamíndárí* and *Patídárí* rights in that estate, from which they and their ancestors had otherwise been for a length of time excluded. *Bhyrodutt Pandey and another* v. *Ram Lall Pandey and others.* 9th Aug. 1847. 2 Decis. N. W. P. 233.—Tayler, Begbie, & Lushington.

46. But this was afterwards overruled, and the majority of the Court decided that the plaintiffs, having received for a length of time nothing beyond the possession of *Sír* land, could not, after a lapse of twelve years, sue to establish their *Zamíndárí* and *Patídárí* right in the estate.[2] *Mt. Rookmun and another* v. *Beharee Paurey and others.* 28th March 1849. 4 Decis. N. W. P. 70. —Thompson & Cartwright. (Tayler dissent.)

47. The law of limitation cannot be pleaded against a plaintiff, where a debt due to him was admitted, and promise of payment made, and payment of nearly the whole sum actually made. *Fraser* v. *Pearee Soondree Dassee and others.* 8th April 1848. S. D. A. Decis. Beng. 308. —Tucker, Barlow, & Hawkins.

48. A claim to enhance the rents of under-tenants cannot be barred by lapse of time. *Ram Komar Mustofee and others* v. *Hurodeb Prudhan and another.* 18th May 1848. S. D. A. Decis. Beng. 455. —Tucker, Hawkins, & Currie.

49. The question of limitation

[2] Construction No. 942, 3d April 1835.

not having been put in issue by the pleadings, the law respecting lapse of time cannot be allowed to operate on the case. *Mt. Imam Bandi and another* v. *Hurgovind Ghose.* 30th June 1848. 4 Moore Ind. App. 403.

50. Where the plaint claimed possession of land, and alleged that the plaintiff was ousted, partly at a time beyond the period of limitation, and partly at a time within that period; it is erroneous to dismiss the whole claim as barred by the rule of limitation, unless it be recorded in the decree that the allegation of partial ouster within the period is untrue. *Bhyrobnath Raee* v. *Neelkaunth Raee and others.* 19th Sept. 1848. S. D. A. Decis. Beng. 832.—Hawkins.

51. The law of limitation, as applied to a *Mutawalli*,[1] cannot be extended to claims preferred by the *Nawáb Názim*. *Kaleenath Raee* v. *Governor-General's Agent.* 21st March 1849. S. D. A. Decis. Beng. 75.—Dick, Barlow, & Colvin.

52. A *Ryot* who has paid an uniform amount of rent as for a certain supposed quantity of land, for more than twelve years, is not barred from claiming a measurement of the land actually in his occupation, and a reduction of his *Jama* upon the *Pergunnah* rates according to the result of such measurement; in the same manner as a *Zamíndár* has always, when not bound by express agreement, a claim to a like measurement. *Durpnurain Raee* v. *Sreemunt Raee and others.* 7th June 1849. S. D. A. Decis. Beng. 188. —Dick, Barlow, & Colvin.

53. The limitation of twelve years refers to the deprivation of right by an act of the adverse party, and not to a mere omission to exercise a right, as of adoption, within that period. *Joy Chundro Raee* v. *Bhyrub Chundro Raee and another.* 18th Dec. 1849. S. D. A. Decis. Beng. 461. —Barlow, Colvin, & Dunbar.

54. A limitation which is good against a former proprietor may not be so against a purchaser at a sale for arrears of revenue: every such succeeding auction-purchaser has a new ground of action under Sec. 20. of Reg. XI. of 1822. *Dool Gobind Das and others* v. *Mohummud Nazim Chowdhree and others.* 6th March 1850. S. D. A. Decis. Beng. 40.—Barlow & Colvin.

55. Cl. 5. of Sec. 17. of Reg VIII. of 1819 is applicable only to a suit for share of sale-proceeds held in deposit, and does not bar a regular action. *Dwarkanath Raee* v. *Sham Chand Baboo and others.* 25th April 1850. S. D. A. Decis. Beng. 153.—Barlow & Colvin.

56. Mere delay in preferring a claim to set aside the arrangement of the Revenue authorities at a Settlement, is not a sufficient ground for the dismissal of the claim, provided the claimants have been in possession within the period prescribed by the law of limitation. *Meer Sukhawut Ali and others* v. *Rai Baneedial Singh and others.* 1st May 1850. 5 Decis. N. W. P. 106*d*.—Begbie.

57. An action brought on an award of arbitration, under Reg. IX. of 1833, within twelve years from the date of such award, is not barred by the law of limitation, although the plaintiff may not have been in possession within twelve years prior to the institution of the suit. *Boojhawun Singh and others* v. *Sheosuhai Singh and others.* 28th May 1850. 5 Decis. N. W. P. 94.—Brown.

58. Where the plaintiff claimed her share of a certain pension, and there was no evidence to prove payments at any particular date, or within the period of twelve years previous to the institution of her suit, but the plaintiff expressly stated in her petition of plaint that the

[1] See the case of *Jewun Doss Sahoo* v. *Shah Kubeer-ood-deen,* 2 Moore Ind. App. 390.

defendant had *always* admitted the justice of her claim, and promised to pay it; it was held, that there was no ground for dismissing her suit as barred by the law of limitation. *Zynut Beebee* v. *Shah Moorad Ali.* 15th June 1850. 5 Decis. N. W. P. 119.—Begbie.

59. It is no bar to a suit brought by a farmer against *Ryots* for rent due to him for the period of his farm, that the suit was brought *nearly* twelve years after the expiration of that period, and that the rents claimed had been already paid by the *Ryots* to the *owners* of the land several years previously. *Goureedutt and others* v. *Chooneelall.* 15th Aug. 1850. S. D. A. Decis. Beng. 410. —Barlow & Colvin.

60. The law of limitation does not apply to claims for the due assessment of land. *Hukeem Abool Hosein* v. *Chutterdharee Singh and others.* 19th Sept. 1850. S. D. A. Decis. Beng. 494.—Barlow, Jackson, & Colvin.

61. Where the Zillah Court had decided in 1839 that a claim was not barred by Sec. 18. of Reg. II. of 1802, and such decision was formally recognised and confirmed by the Provincial Court in their proceedings in 1841, and was not appealed from to the Sudder Adawlut; it was held, that such decision was final, and that the claim could not be afterwards dismissed as barred by the law of limitation. *Syed Mahomed* v. *Seeneevassiengar and others.* 30th Sept. 1850. S. A. Decis. Mad. 86.—Hooper & Thompson.

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3. *Acknowledgment in bar.*

62. In a suit for the recovery of a sum of money advanced seventeen years previously, it appeared that the defendant had granted a bond to the plaintiffs for Rs. 71, stating that sum to be part of the advance claimed, only three years before the institution of the suit. Held, that this brought the cause of action within three years, and that consequently the suit was not barred by the rule of limitation. *Koula Put Sahoo and another* v. *Mymunut Ali Khan.* 27th Aug. 1845. S. D. A. Decis. Beng. 280. —Rattray.

63. Plaintiff sued for certain lands, as his inheritance from his father, more than twelve years after his father's death. The defendant pleaded the rule of limitation in bar of the claim, but admitted that a portion of such lands belonged to the plaintiff, but were in the possession of the defendant under a farm for fifty-one years from the plaintiff, given to the defendant's father. Plaintiff denied the lease. Held, that the plaintiff's claim to the lands included in the lease was not barred by the rule of limitation, considering the admission of the defendant. *Denobundoo Bannerjee and another* v. *Muddun Mohun Bonnerjee.* 27th Jan. 1846. S. D. A. Decis. Beng. 18.—Reid & Jackson.

64. A claim for money due on two bonds, the first dated more than twelve years before the institution of the suit, was held not to be barred by the rule of limitation; the debt exhibited on the first bond having been acknowledged, with promise of payment, on the second.[1] *Gour Buksh Singh* v. *Shah Sukhawut Hosein and another.* 18th June 1846. S. D. A. Decis. Beng. 230. —Rattray.

65. An admission by a *Lákhiráj-dár*, during the continuance of a *Lakhiráj*, of the existence of a *Mukarrarí* right within the rent-free tenure, does not, under the law of limitation, bar his suit to engage for a settlement of the lands after its resumption. *Baboo Ramlochun Singh* v. *Hyder Ali Khan.* 29th March 1849. S. D. A. Decis. Beng. 85.—Dick, Barlow, & Colvin.

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[1] See Sec. 14. of Reg. III. of 1793, and see *supra*, Pl. 44.

66. Land was decreed to *A* in 1802, and it was judicially acknowledged by him in 1806 that possession had been given accordingly; but the question afterwards revived, and remained open till 1835, when the Judge struck the case off his file of execution of decrees, recording his opinion, grounded on this acknowledgment, and upon inquiries made under his own directions, that possession had been given in 1805. A suit by the heirs of *A*, for possession of the same land, grounded on the assertion that possession had never been really given, was held to be barred by the law of limitation, although brought within twelve years from 1835. *Baboo Chintamun Singh and others* v. *Raja Bejye Govind Singh and others.* 23d May 1849. S. D. A. Decis. Beng. 161. —Barlow & Colvin. (Dick dissent.)

67. Held, that limitation in a suit for rents cannot be barred by an admission which referred only to possession of the land, and did not acknowledge that any of the rents claimed in the suit were unpaid. *Doond Buhadoor* v. *Raee Koosal Singh.* 3d Jan. 1850. S. D. A. Decis. Beng. 3.—Barlow, Colvin, & Dunbar.

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4. *Deductions from the time.*

68. In calculating the period of limitation in a case once nonsuited, a deduction should be made of the time it was pending in the Courts. *Ameer Hosein and another* v. *Abdool Wahab and others.* 26th July 1847. 7 S. D. A. Rep. 375.—Tucker. *Usdun-o-Nissa Bibi* v. *Fukhuroodeen Mohummud and another.* 5th Jan. 1848. S. D. A. Decis. Beng. 3.—Dick, Jackson, & Hawkins. *Muddun Gopal Baduree and others* v. *Muha Ranee Kishen Munnee Dibeea and others.* 18th May 1848. S. D. A. Decis. Beng. 458.—Tucker, Hawkins, & Currie. *Hills and others* v. *Greig and others.* 28th Dec. 1848. S. D. A. Decis. Beng. 891.—Jackson. *Sumbhoo Chundur Mullick* v. *Kirpanath Raee and others.* 29th March 1849. S. D. A. Decis. Beng. 84.—Dick, Barlow, & Colvin.

69. *A* sued for *money* due on a certain deed, but was nonsuited because he had not sued under the terms of the deed for *possession.* He afterwards brought a suit on the same deed for *possession.* Held, that, both under the wording and spirit of Cl. 3. of Sect. 18. of Reg. II. of 1803, the two suits involved "the same matter in dispute," that he had "referred his claim within the period allowed by law to a Court of competent jurisdiction," that the order of nonsuit passed in the former of the two suits was of itself a "sufficient cause" whereby he "was precluded from obtaining redress," and that, under such circumstances, he was entitled to a deduction of the time during which his former suit was before the Courts. *Rae Tek Lall* v. *Sheonundun Singh and others.* 16th July 1849. 4 Decis. N. W. P. 233. —Thompson, Begbie, & Lushington.

70. A suit brought in 1845 to set aside a summary decree passed in 1823, was held to be barred, notwithstanding intermediate proceedings, which terminated in a nonsuit. *Sheikh Kumur Ali and others* v. *Mt. Hur Koonwur.* 2d Aug. 1849. S. D. A. Decis. Beng. 322.—Dick, Barlow, & Colvin.

71. In deducting from a calculation of the period which would affect a claim by limitation, the term for which a suit, terminating in a nonsuit, was pending in the Court, the deduction must extend to the whole time for which the question of the propriety of the first order of nonsuit was pending before the Superior Courts in appeal. *Ram Ruttun Raee and others* v. *Bindrabun Chundur Raee and others.* 24th Sept. 1850. S. D. A. Decis. Beng. 513.—Dick, Barlow, & Dunbar.

72. Where a man, who is a co-

sharer in joint property dies, leaving a widow who is his heir, the period of limitation, as regards a suit for her husband's share, does not run against her whilst she continues to receive maintenance from those in possession, on account of her right to such share. *Ras Munee Dibeeah* v. *Bhaguruttee Dibeeah.* 15th Sept. 1845. S. D. A. Decis. Beng. 293.—Dick.

73. But the mere fact of a defendant in possession of lands and personal property giving presents at different times to the plaintiff, who claimed under a *Hibeh námeh,* dated more than twenty years before he brought forward his claim, does not bar the operation of the law of limitation, if it be not shewn that the plaintiff has been in receipt of any portion of the profits of the estate. *Guora Buktanee* v. *Alumchund.* 19th May 1847. S. D. A. Decis. Beng. 160. —Dick, Jackson, & Hawkins.

74. It is discretional with the Revenue authorities to admit parties claiming the proprietary right to engage, or not, as they may deem expedient; but the period during which a *Maháll* is held *Kham,* or farmed, is not to be counted as *adverse* possession against the ousted proprietor, whose rights are, for the time, merely in abeyance, and they may be restored to him at a succeeding Settlement. *Qazie Imamooddeen and others* v. *Bubur Khan and others.* 10th Sept. 1850. 5 Decis. N. W. P. 310. —Begbie.

75. In a suit for the *Dharmakarta* of a *Pagoda,* it was held, that the period during which the Collector managed the *Pagoda* under Reg. VII. of 1817 was not to be included in the time allowed by the law of limitation, and that the cause of action must be calculated from the date when the Collector ceased to interfere directly with the management. *Doddacharryar and another* v. *Paroomal Naicken and others.* 31st Oct. 1850. S. A. Decis. Mad. 98.—Thompson & Morehead.

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5. *As to Infants.*

76. Where the plaintiff, an adopted son, petitioned the Collector, objecting to the separation of a *Talook,* and was informed that no notice could be taken of his petition, since his name was not registered as proprietor, and, more than twelve years afterwards, he instituted a suit against his adoptive mother, calling in question the legality of the separation; such suit was held to be barred by the law of limitation, as he should have persisted in his name being registered when he attained his majority (which he attained nine years previous to his petition), and, if his mother had refused, should have sued her. *Buhwanee Chunder Chowdree and others* v. *Kashee Kant Ucharj Chowdree.* 19th Aug. 1846. S. D. A. Decis. Beng. 310.—Reid, Dick, & Jackson.

77. It is incumbent on a minor to bring his suit before a competent Court, or to shew by clear and positive proof that the thing claimed was demanded within twelve years of his attaining his majority. *Anoopnath Missur and another* v. *Dulmeer Khan and another.* 31st Aug. 1846. 1 Decis. N. W. P. 135.—Thompson, Cartwright, & Begbie. *Syud Altaaf Hussein* v. *Imtiaz Hussein Khan and others.* 27th May 1846. 1 Decis. N. W. P. 22.—Thompson.

78. Held, that a suit by a ward of the Court of Wards under the tutelage of guardians appointed by the Court, instituted four years after he had attained his majority, but after the expiration of the period of limitation, was barred by the law. *Rajah Kishennath Raee* v. *Muthoornath Mookerjea and others.* 1st Sept. 1847. S. D. A. Decis. Beng. 506.—Dick.

79. A suit brought within twelve years of the plaintiff's attaining his majority is not barred by the law of limitation. *Bhyrub Inder Nurain Raee* v. *Ranee Bhoobun Maye Dibbea.* 13th July 1848. S. D. A.

Decis. Beng. 676.—Tucker, Barlow, & Hawkins.

80. The period of disqualification to sue during minority, is not to be calculated against a party who was a ward of Court under the tutelage of guardians, and the property under the care of managers appointed by the public authorities. *Collector of Rungpore* v. *Gudadhur Chowdhree and others.* 2d March 1848. 7 S. D. A. Rep. 443.—Jackson. *Bhyrub Inder Nurain Raee* v. *Ranee Bhoobun Maye Dibbea.* 13th July 1848. S. D. A. Decis. Beng. 676. —Tucker, Barlow, & Hawkins. *Govind Lal Raee* v. *Fukhroodeen Mohummud Ahussun Chowdhree.* 29th Oct. 1849. S. D. A. Decis. Beng. 399.—Dick. *Rajah of Burdwan* v. *Ram Jadub Ghose and others.* 27th April 1850. S. D. A. Decis. Beng. 157.—Barlow & Colvin. *Mt. Bolakee Komaree and others* v. *Lukheemonee Dassee.* 9th July 1850. S. D. A. Decis. Beng. 349. —Colvin & Dunbar.[1]

81. The neglect of a guardian to prosecute his ward's claim does not operate to the prejudice of the ward in regard to lapse of time, and the ward can sue on attaining his majority.[2] *Ranee Bhoobun Maye* v. *Bhyrub Indernurain Raee.* 6th June 1848. S. D. A. Decis. Beng. 513.—Jackson.

82. But the action must be brought immediately on the minor's attainment of his majority, or good and sufficient cause be shewn for the delay, to the satisfaction of the Court, otherwise the suit becomes barred by the law of limitation.[3] *Rajah Chetpal Singh* v. *Sheo Gholam Singh and others.* 30th Aug. 1848. 3 Decis. N. W. P. 306.—Thompson & Cartwright. (Tayler dissent.)

83. It was afterwards held, that the minor could not be expected to be ready to appear on the very day on which he attains his majority, and that a certain time must be allowed to him to prepare his case, it being in the discretion of the Court trying the case to determine in each instance whether the necessary period has been exceeded. *Ramtchul Singh* v. *Koonwur Surrubdowun Singh.* 2d Sept. 1850. 5 Decis. N. W. P. 280. —Begbie, Lushington, & Deane.

84. And where the cause of action had arisen more than twelve years before the minor had reached his majority, and he had not filed his suit until one year and four months after that time, the Court, under the circumstances, regarded the one year and four months as time spent in preparing his case. *Ibid.*

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[1] These cases overrule the Construction No. 335 of 1821, and the decision in a former case, *Rajah Kishennath Raee* v. *Muthoornath Mookerjea and others.* 1st Sept. 1847. S. D. A. Decis. Beng. 506.—*Supra* Pl. 78.

[2] But a right of suit once barred by time cannot be revived in consideration of the minority of any person, upon whom, but for such bar, it would have devolved. See the case of *Neelmunee Pal Chowdree* v. *Rajah Burdakaunt Roy.* 6 S. D. A. Rep. 139.

[3] This decision is directly contrary to that in a former case, passed by a full Bench, Mr. Thompson being one of the Judges, on the 6th June 1843, but not reported (*Bishen Dial and others* v. *Unmohl Singh and others*), and to the precedent of *Imaum Buksh Khan* v. *Nawab Dilawur Jung* (1 S. D. A. Rep. 190), decided by Messrs. Harington & Fombelle on the 22d June 1807. The majority of the Court adopted the above view on a full consideration of the law (Sec. 18. of Reg. II. of 1803), and of the two precedents referred to. Mr. Tayler considered, that whatever might be the right construction of the law, the precedent of the Calcutta Court had been so long recognised, and the principle it laid down having been deliberately adopted by the Western Court, the practice ought to be considered to have the force of law. It may be observed, that in both the cases, *Imaun Buksh Khan* v. *Nawab Dilawur Jung*, and *Bishen Dial* v. *Unmohl Singh*, the period of limitation had expired before the minor came of age; whereas in the present case five years remained unexpired of the twelve years from the date of the cause of action after the plaintiff had attained his majority.

85. If a minor be under the tutelage of a guardian appointed by the Court of Wards, the minor cannot be considered to have attained his majority until the date of the order of the Court removing his guardian; and the period of limitation for instituting a suit will run from the date of such order, and not from the cause of action. *Mehr-o-Nissa* v. *Rajub-o-Nissa*. 5th July 1848. S. D. A. Decis. Beng. 644.—Dick, Jackson, & Hawkins.

86. Semble, the possession of the Court of Wards of an estate, and, after its release, of two brothers who took care of their sister and attended to her wants, will not be regarded as *adverse* possession, so as to affect the claim of the sister to her share of the property. *Abdool Ruhman Khan* v. *Waris Ali Khan and others*. 14th Sept. 1850. 5 Decis. N. W. P. 313.—Lushington.

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6. *Time of Commencement of Period.*

87. Where Hindús are entitled to require the performance of certain ceremonies by the members of their family, each refusal to perform the ceremonies constitutes a separate ground of action. *Holas Ram Deb and another, Petitioners*. 5th Jan. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 21.—Reid.

88. Held, by the Sudder Dewanny Adawlut, that where persons sue to recover money due on an instalment bond, the reckoning of the period of limitation, specified in Sec. 4. of Reg. V. of 1827, must be governed by the date of the instalment due, and not by the date of the bond. *Ramchunder Suddashew Wukeel and others* v. *Balla Hoossein*. 27th Jan. 1843. Bellasis 52.—Bell, Simson, & Hutt.

87. *A* had an account current with *B*. A balance was struck in 1833-34, and was against *A*. Shortly afterwards, *B* transferred his business to *C*, who, in making up his books, carried forward the old balance for 1833-34 with interest, and entered it as a debit for the year 1835-36. *C* thereon sued *A* in 1841. Held, that the claim was barred by the law of limitation, which must be reckoned from the date on which the old balance was struck, viz. 1833-34, no new money transaction having taken place subsequently. *Ashruff Mahmood Bhaee* v. *Purbhoodass Doolubdass*. 23d March 1843. Bellasis 41.—Bell, Pyne, & Simson.

90. Claims to the entire estate of a deceased Muhammadan having been set up by his widow and brother, neither of which appeared to be well founded, the period of limitation for the institution of an action by his heirs-at-law was calculated from the date of his death, and not from the date of the decree between his widow and brother. *Syud Hussein Reza* v. *Ameeroonissa and others*. 22d April 1843. 7 S. D. A. Rep. 124. —Rattray & Barlow. (Reid dissent.)

91. But this was afterwards overruled; and it was held, that special claims to the estate of a deceased Musulmán having been dismissed, and the property declared divisible amongst his heirs, the period of limitation, with regard to the claim of the heirs, must be calculated from the date of the decision pronouncing their right to share in the property. *Syud Hosein Rezza* v. *Ameer-oon-Nissa and another*. 12th June 1847. 7 S. D. A. Rep. 316.—Rattray & Tucker. (Barlow dissent.)

92. The spirit of the law of limitation requires that partners in business must sue each other for alleged balances within twelve years from the date of an adjustment of accounts, which both parties admit to have taken place. *Nundkoomar Rai* v. *Indurmunnee Chowdrain and others*. 19th March 1845. S. D. A. Decis. Beng. 65.—Reid, Dick, & Gordon.

93. The period of limitation for the institution of a suit for a bond debt must be calculated from the date when the amount is made pay-

able, and not from the date of the bond. *Soorut Narain Sing* v. *Baboo Coomar Sing.* 17th March 1846. S. D. A. Decis. Beng. 107.—Tucker. *Mt. Maan Koonwur and another* v. *Mahomud Lall Meer Khan.* 10th April 1847. 2 Decis. N. W. P. 96. —Tayler.

94. Where a party was deprived of his right of possession by the order of a Magistrate, and such order was afterwards affirmed by the Commissioner of Circuit; it was held, that the period of limitation ran from the date of the order. *Oma Dial Singh and others* v. *Mt. Tej Ranee and others.* 9th Nov. 1846. S. D. A. Decis. Beng. 378.—Rattray, Tucker, & Barlow.

95. In a suit for the reversal of an auction sale, the cause of action should be calculated from the day of sale, that being the date from which the auction purchaser becomes responsible for the revenue, and not from the date of the confirmation of the sale by the revenue authorities. *Nunkoo Singh* v. *Collector of Jounpoor and another.* 19th Dec. 1846. 1 Decis. N. W. P. 272.—Tayler.

96. Suit instituted for the possession of lands. The question of possession had been tried previously, under the provisions of Reg. XV. of 1824, on the application of the plaintiffs, but the decision was against them. The present suit was instituted within twelve years of the date of the Magistrate's *Rúbakárí* upholding the possession of the defendants, but beyond twelve years from the date of the alleged dispossession by the defendants. Held, that the period of limitation should be calculated from the date of the decision of the case under Reg. XV. of 1824, because only from that date could the defendants be said to have enjoyed *undisturbed* possession under a fair and legal title. *Roodurnath Surmah Chowdry and others* v. *Juggernath Burm and others.* 12th May 1847. S. D. A. Decis. Beng. 141. —Dick & Jackson. (Hawkins dissent.)[1]

97. A party being originally dispossessed by the Magistrate under Reg. XV. of 1824, may sue for possession at any time within twelve years from that act of the Magistrate. *Juggut Isree Dibbea and others* v. *Tarnikaunt Lahoree and others.* 30th June 1847. S. D. A. Decis. Beng. 294.—Dick, Jackson, & Hawkins.[2]

98. A plaintiff suing in right of his mother, the period allowed for the institution of the suit must be calculated from the date of her death. *Rajchunder Dutt* v. *Bugwuttee Dassea and another.* 19th May 1847. S. D. A. Decis. Beng. 155.—Dick, Jackson, & Hawkins.

99. A claim, under the orders of a competent Court, having been kept in abeyance pending the result of another suit; it was held, that the period of limitation must be calculated from the date of the final disposal of such suit, and not from the date of the original cause of action. *Fukeer Chund Deo and others* v. *Brijmohun Das and others.* 31st July 1847. S. D. A. Decis. Beng. 386.—Tucker, Barlow, & Hawkins.

100. In a claim to the possession of *Chur* lands; it was held, under the circumstances, that the period of limitation was to be calculated from the date of the confirmation of an

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[1] Mr. Hawkins considered that an application to the Magistrate was not a preferring of the claim to a competent Court within the meaning of Sec. 14. of Reg. III. of 1793, any more than a miscellaneous application to a Civil Court (See Construction No. 813) would have been.

[2] Mr. Hawkins observed in this case, that as the plaintiffs were originally dispossessed by the Magistrate, their application to that officer was perfectly correct; but he also remarked, that as the defendants had asserted that they had been in possession for a period antecedent to the proceedings in the Magistrate's Court, he would leave the application of the law of limitation an open question, with reference to any period of adverse possession which the defendants might be able to prove.

award under Reg. XV. of 1824. *Kishen Kaunth Shah and others* v. *Gobind Chundur Raee and others.* 1st Sept. 1847. S. D. A. Decis. Beng. 502. — Dick, Jackson, & Hawkins.

101. Summary applications for review of judgments passed in regular suits cannot be taken to form fresh starting-points in the calculation of the lapsed period required to meet the laws laid down in connection with the law of limitation. *Kadir Buhsh Khan and others* v. *Mazum Ali Khan and others.* 16th Sept. 1847. S. D. A. Decis. Beng. 545.—Rattray.

102. A declaration in a decree that some person, who may or may not be before the Court, may sue hereafter for the whole or some part of the subject-matter of the suit, cannot be considered as marking a new term from which the period of limitation is to be reckoned: such a decretal order cannot control existing liabilities; and it does not constitute a right, nor can it form a cause of action. *Mt. Ommut-o-zuhra Begum* v. *Lootfoollah Khan.* 30th Sept. 1847. 7 S.D.A. Rep. 399. —Dick, Jackson, & Hawkins. *Zeinut Begum* v. *Bheekun Lal and others.* 12th Sept. 1849. S. D. A. Decis. Beng. 392.—Dick, Barlow, & Colvin.

103. After a division of property between the sons of a deceased banker, one of them, having realized, by a civil suit, the amount of a bond debt due to the estate, was sued by his co-heirs for their shares of the money. Held, that the cause of action arose on the date of realization, and not on that of partition or that of the bond. *Wuzeer-oon-Nissa* v. *Roshunnuk-oon-Nissa and others.* 28th Jan. 1848. 7 S. D. A. Rep. 425.—Jackson, Hawkins, & Currie.

104. The "beginning" of the year being specified, but no particular date mentioned; the Court held, that the word "beginning," with reference to the law of limitation, must be taken to mean any time within the first quarter. *Judoonath Sundeeal* v. *Mt. Sukee Preea Chowdhrain.* 19th Feb. 1848. S. D. A. Decis. Beng. 97. —Dick.

105. The latest payment and receipt of interest on an original debt, determines the period of the right of action. *Baboo Kishen Purshad Sahee* v. *Mt. Dhurm Kowur and others.* 2d March 1848. S. D. A. Decis. Beng. 132.—Rattray.

106. In a suit for the recovery of a sum of money due on an account current, the plaintiff's claim, if reckoned by the Hindú æra, was two days within the period of limitation prescribed in Sec. 3. of Reg. V. of of 1827; but if reckoned by the English æra, it was twenty-three days beyond such period. Held, by the Sudder Dewanny Adawlut, that, by the interpretation on the above law, amid conflicting æras the party affected by the Regulation is to choose the æra most favourable to his own interests, and that such party in this case, according to the principle of the Regulations and justice, was the defendant. The plaintiff's claim was accordingly declared barred by the rule of limitation above referred to. *Jamsetjee Dorabjee* v. *Prannvullub Khooshalbhaee.* 20th June 1848. Bellasis, 90.—Simson & Hutt. (Bell dissent.)

107. The period for the admission of a suit to cancel a summary decision by a Collector must be calculated from the date of the communication of the Sudder Board's Order affirming such decision. *Petumber Ghose* v. *Hurnath Banerjee.* 5th July 1848. S. D. A. Decis. Beng. 650.—Tucker.

108. Where the Settlement Order of 1834 merely confirmed the defendants in that which they were ascertained to have been in possession of for some time previous to the Ameen's measurement, such Order cannot be held to be the date from which the plaintiffs' alleged dispossession commenced, and from which the period of limitation is to be cal-

culated. *Syed Kasim Ali Khan* v. *Bhageeruttee Singh and others.* 1st Aug. 1848. 3 Decis. N. W. P. 275. —Cartwright.

109. The date of dispossession should be decided independently of any proceedings in the Criminal Courts regarding disputes as to ownership, such disputes not determining the possession of either party. *Ikbal Ali and others* v. *Shewa Raee.* 30th Dec. 1848. S. D. A. Decis. Beng. 898.—Barlow, Jackson, & Hawkins.

110. And the period of limitation cannot be calculated from the latest record of such disputes in the Criminal Court. *Ibid.*

111. Where property is wrongfully attached and sold in execution of a decree, the period of limitation runs from the sale, and not from the attachment. *Mt. Ramdoee and others* v. *Ajeetram Sahoo and others.* 15th Feb. 1849. S. D. A. Decis. Beng. 38.—Dick, Barlow, & Colvin.

112. The plaintiff sued the defendant for a sum of money expended in repairs of a house, jointly occupied by the plaintiff and defendant in 1238 and 1241 *Fasli* (A.D. 1830, 1833), when an adjustment of accounts took place, the defendant having ejected the plaintiff in the year 1243 (A.D. 1835). Held, that the claim to the money does not arise from the date of the ejectment; and although he might have forborne to press for payment of his claim, in consideration of his being in joint possession of the house, his forbearance could not give him a right to sue for the money expended, beyond the period of twelve years from the adjustment of the accounts between the parties. *Dookhbijye Singh* v. *Benee Madho Singh.* 26th March 1849. 4 Decis. N. W. P. 58.—Tayler & Thompson. (Cartwright dissent.)

113. *A* (the appellant) obtained, in 1830, a decree from the Mofussil Special Commissioner, for the reversal of a sale of land which had taken place for arrears of revenue. Whilst the case was pending, *B*, the father of *C*, the present plaintiff (respondent) applied for his share of the estate to the Special Commissioner, who, abstaining from offering any opinion on the merits of his claim, contented himself by giving a decree to *A*, and inserting a clause to the effect, that the rights and interests of other sharers, whoever they might be, were not to be affected by the decree, but, if they thought proper, they might apply to the Collector at the next Settlement to have their shares adjusted. *C* did apply to the Collector; and his application having been rejected by that officer in 1840, he brought an action in 1847 to obtain the share which had been unsuccessfully demanded from the Special Commissioner in 1830. Held, that such action was barred by the law of limitation, as the Special Commissioner was competent to have decided upon the right asserted by *B*; and when he did not decide upon it, it was for *B* to have appealed to the Sudder Special Commissioner, when, if he obtained no redress, he should have instituted his suit in the Civil Court within twelve years from the date of the Mofussil Special Commissioner's decree, as laid down in Construction No. 980, of the 18th Sept. 1835. *Sheikh Neeamutoollah and others* v. *Lall Mahumed.* 16th May 1849. 4 Decis. N. W. P. 113. —Thompson & Begbie. (Lushington dissent.)

114. But it was afterwards held, on a review of judgment, and overruling the last decision, that the order of the Mofussil Special Commission does not constitute a cause of action until confirmed by the Sudder Special Commission.[1] *Sheikh*

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[1] In accordance with the opinion expressed by Mr. Lushington when the case was previously decided. And see Reg. I. 1821, s. 10. Cl. 6. ".

Niamutoollah and others v. *Lall Mohumed.* 18th Feb. 1850. 5 Decis. N. W. P. 56.—Tayler, Begbie, & Lushington.

115. A Hindú widow acknowledged that the proprietary right in land held by her rested in a son adopted by her daughter-in-law, and made over to him a portion of the land, retaining, with his permission, the remainder as a life tenure. Held, that the suit of the collateral heirs of the husband of the widow must be reckoned from the date of such acknowledgment, and not from the widow's death. *Bhyrub Chundur Chowdhry* v. *Kallee Kishwur Raee and others.* 28th May 1849. S. D. A. Decis. Beng. 170.—Colvin.

116. An adopted son, and, after his death, his widow, having neglected for more than twelve years to sue for land in possession of the adoptive mother; it was held, that a suit by collaterals, against the adoptive mother, must be brought within twelve years after the close of such first twelve years during which the right of suit was with the widow of the adopted son. *Ibid.*

117. A revenue sale sets aside the leases of the former *Zamíndár*, with certain exceptions; and if a purchaser sue to oust a party holding by such tenure, the time of limitation is to be reckoned from the date of the sale. *Goorpersaud Raee* v. *Sumbhoonath Dutt.* 13th June 1849. S. D. A. Decis. Beng. 203.—Jackson.

118. The period of limitation for a balance of rent for certain specified years is to be reckoned from the date when the arrear became demandable; and an assignment, subsequently given in satisfaction of a decree, cannot be pleaded successfully for a break in the computation of the lapsed period. *Sheo Shunker Singh and others* v. *Purtab Nurain.* 21st June 1849. S. D. A. Decis. Beng. 243.—Dick, Barlow, & Colvin.

119. A party instituted a suit in 1827, for the recovery of money due to him on a bond. His claim was allowed by the late Auxiliary Court, but that decision was over-ruled by the Provincial Court on the 29th May 1829 for want of jurisdiction. In the latter year he presented a petition for a special appeal, which was rejected on the 31st Dec. The original plaintiff having died, his heir sued for the amount in question in the Zillah Court on the 10th Dec. 1841, which decided in his favour. From this decision a special appeal was admitted by the Sudder Adawlut, on the ground, amongst others, that the law of limitations had not been duly considered; and it was held, that the claim was clearly barred by that law, as the cause of action must be calculated from the date of the Provincial Court's decree. *Payingalat Pockroo and another* v. *Kariaden Moideen Cootty.* 23d Aug. 1849. S. A. Decis. Mad. 46.—Thompson & Morehead.

120. A Collector of Cuttack, in Oct. 1805, re-annexed a *Mukaddimí* tenure to a *Zamíndárí* estate, expressly as only a temporary arrangement until the permanent Settlement of the revenue; no such permanent Settlement was made, but successive temporary Settlements were continued till a recent date, when a detailed Settlement was made under Reg. VII. of 1822 and IX. of 1833, at which last Settlement the Revenue authorities referred the *Mukaddim*, claiming a separation from the *Zamíndárí*, to the Civil Court. Held, that limitation runs against the *Mukaddim* only from this order of the Revenue authorities; and that the *Mukaddim* had a fresh cause of action on the formation of each temporary Settlement, though it would have been otherwise had the Revenue officers, at any temporary Settlement, entered upon the question of right, and given an opinion adverse to his claim to separation. *Chowdhree Loknath Das and others* v. *Khettribur Bhug-*

wunt Singh. 14th March 1850. S. D. A. Decis. Beng. 46.—Dick, Barlow, & Colvin.

121. The true meaning of Construction No. 980 is, that, in those parts of the country in which Reg. XXII. of 1795 is in force, any sharer dispossessed before the British accession, who may recover posssession from an interloper, by means of a decree of Court, *or otherwise*, is to be regarded as the representative and trustee of all the other sharers; and that such other sharers may, within twelve years, regain their rights by a suit brought against him. *Purgass Singh and others* v. *Nusub Singh and others.* 25th June 1850. 5 Decis. N. W. P. 132.—Begbie, Deane, & Brown.

122. And where *A*, a *Patidár*, recovered possession by his re-admission, as proprietor, by the Revenne authorities, and *B* sued *A* for his share within twelve years of *A*'s recovery of possession, and obtained a decree, and after the expiration of the twelve years, other *Patidárs* sued for their shares; it was held, that their suit was barred by the law of limitation, as the period must be reckoned from the time when *A*, who might be regarded as the representative of the ousted *Patidárs*, obtained possession, and not from the decree which adjudged the proprietary right to *B* their coparcener.[1] *Ibid.*

123. Where one of two grantees of a pension sued the other for her share, and it appeared that the pension had been kept in deposit by the Collector for a lengthened period; it was held, that the plaintiff's cause of action as against the defendant arose when he, the defendant, began to receive the pension, and had the option of paying her share, and refused to do so. *Zynut Beebee* v. *Shah Moorad Ali.* 15th June 1850. 5 Decis. N. W.P. 119.—Begbie.

124. The cause of action in the suit of a purchaser of a *Patní*, at a sale for arrears, is to be calculated from the date of his purchase. *Mt. Bolakee Komaree and others* v. *Luckheemonee Dassee.* 9th July 1850. S. D. A. Decis. Beng. 349.—Colvin & Dunbar.

125. A widow having formally assented to the succession of a third party to the estate of her husband, and such succession being contested by a collateral heir; it was held, that limitation will run against the suit of the collateral heir from the date of the succession, and not merely from that of the death of the widow.[2] *Bhyrub Chundur Chowdhree* v. *Kalee Kishwur Raee and others.* 3d Aug. 1850. S. D. A. Decis. Beng. 369.—Colvin.

126. The plaintiffs and defendants formerly held separate possession in equal moieties of a certain *Mauza.* That estate was sold for arrears of revenue, and suits to reverse the sale were afterwards successfully instituted by both parties. The plaintiffs obtained their decree somewhat later than the defendants, that is, in 1825, but they did not put it into execution at the time. The defendants, on the other hand, sued out execution of their decree, and obtained from the Revenue authorities engagements for

[1] The words of the Constrection are—"The Putteedars, or other sharers, must prefer their claims within the period of twelve years from the date on which the proprietary right is adjudged *by a decree of Court* to the Zumeendar;" but the law of which the Construction is expository makes no special reference to decrees of Court. It enacts (Cl. 5. of Sec. 35. of Reg. XXII. of 1795) that the *recovered possession* of any one sharer shall entitle the other sharers to restoration; and this recovery, though in ordinary cases effected by a decree of Court, may of course, as in the instance above, be effected without such process. The peculiarity in the wording of the Construction doubtless arose in the accidental circumstances, that the authority making the reference, the answer to which has become the Construction, had before him the supposed case of a restoration to rights in virtue of a judicial decree.

[2] And see *supra*, Pl. 115.

the *Mauza* as proprietors of one-half and as managers of the other half on the part of the plaintiffs. On the occasion of a general demarcation of lands in 1833, a tract in the cultivation of an ancestor of the defendants was measured within the *Rukbah* of the said *Mauza;* but the Settlement Officer, on the application of the defendants, and after establishment of their right, again separated the tract from the *Khusreh* of the said *Mauza,* constituted it into a new *Mahåll,* and confirmed the defendants in possession of it. The plaintiffs preferred remonstrances to the superior Revenue authorities, and petitioned the Civil Court, but without effect, and eventually brought an action for recovery of possession of one moiety of the new *Mahåll.* Held, that the cause of action arose in 1833, when the new *Mauza* was formed, and not at the time of the decree; and that the decree for a share in the *Mauza* could not cure the defect of omission to sue within the period fixed by law for a share of the distinct and independent *Mahåll. Bholanath Rai and others* v. *Surubjeet Rai and others.* 16th Sept. 1850. 5 Decis. N. W. P. 320.—Begbie, Lushington, & Deane.

127. The period for bringing a suit for the reversal of the order of the Settlement Officer runs from the order which fixes the proprietary right, and not from the *Rubakárí* of Settlement, the document in which a history of the Settlement is commonly embodied, but in which no investigation is made into rights, and no declaration thereof is judicially recorded. *Ulup Rai and others* v. *Meer Sukhawut Ali and others.* 23d Sept. 1850. 5 Decis. N. W. P. 352.—Begbie, Deane, & Brown.

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7. *Time of conclusion of period.*

128. The period of limitation ends on the day when the plaint is duly lodged by the complainant in a Court of competent jurisdiction, not on the day when the suit is placed by the Sudder Court on the file of the Court which they deem most proper to try it. *Oma Debea and others* v. *Sheeb Pershad Lahuree.* 29th July 1846. 7 S. D. A. Rep. 270.—Reid, Dick, & Jackson.

129. Nor upon the day when the plaint is numbered and sent for decision; for if there be any delay in that process, it is not the fault of the plaintiff, but of the Judge. *Jokun Rawoot and others* v. *Omrao Rawoot and others.* 27th June 1849. S. D. A. Decis. Beng. 252.—Jackson.

130. It is necessary, under Sec. 14. of Reg. III. of 1793, that a party, claiming the benefit of an extension beyond the ordinary term of limitation, should prove that he was, by good and sufficient cause, *precluded* from obtaining redress. *Chutter Dharee Lal* v. *Bikaoo Lal.* 11th June 1850. S. D. A. Decis. Beng. 282.—Barlow, Jackson, & Colvin.

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8. *Special Rule.*

131. The failure of a *Darpatnídár* to bring his action for damages he may have sustained by reason of the bad faith of his superior, under whom he held, for two months after the date of the sale of the *Patní* tenure, does not bar the cognizance of his suit with reference to Cl. 5. of Sec. 17. of Reg. VIII. of 1819. *Lukheenurain Chuckerbuttee and another* v. *Busawun Tiwaree.* 12th March 1845. S. D. A. Decis. Beng. 48.—Reid, Dick, & Gordon.

132. An order of nonsuit having been passed in an action, brought within time, for reversal of a summary award of the Revenue authorities under Reg. VIII. of 1831; it was held, that the period during which such action was pending was not to be included within the limitation of one year prescribed by Sec. 6. of that Regulation, in the event of the institution of another suit. *Cheedam Mundul* v. *Bykuntnauth Dutt*

and others. 25th Nov. 1846. 7 S. D. A. Rep. 281.—Barlow.

133. A party is not entitled to come into Court under Sec. 3. of Reg. II. of 1805, without pleading such law. *Syud Hosein Rezza* v. *Ameer-oon-Nissa and others.* 12th June 1847. 7 S. D. A. Rep. 316. —Rattray, Tucker, & Barlow.

134. Nor unless he specifically set forth the nature of the fraud. *Ibid.*

135. A party, to be entitled to the benefits of the *special* rule of limitation, must, in the Court of first instance, specifically set forth the nature of the fraud, and distinctly plead for a hearing under Cl. 2. of Sec. 3. of Reg. II. of 1805.[1] *Mt. Ommut-o-Zuhra Begum* v. *Lootfoollah Khan.* 30th Sept. 1847. 7 S. D. A. Rep. 399.—Dick, Jackson, & Hawkins. *Alum Bibi* v. *Jugdees Ram Das and others* 20th Dec. 1848. S. D. A. Decis. Beng. 880.—Dick.

136. A plaintiff is not entitled to the benefit of the special provisions of Cl. 2. of Sec. 3. of Reg. II. of 1805, in regard to possession violently or fraudulently acquired, unless a plea, founded on those provisions, be contained either in his plaint or replication. *Syud Mohummud and others* v. *Mt. Sukeena.* 6th June 1850. S. D. A. Decis. Beng. 267.—Barlow & Jackson.

137. The Collector has not any power to refuse a sale for arrears of rent demanded by the *Zamíndár* of a *Patní* tenure, and no appeal lies to the Commissioner respecting the right of the *Zamíndár* to demand a sale: such a sale, therefore, cannot be considered to be of the nature of a summary award of the Collector, and consequently does not fall under the restriction of Sec. 6. of Reg. VIII. of 1831; but a suit may be brought for cancelling such sale any time within twelve years. *Syud Keramut Ali Mootuwullee* v. *Sreemuttee Dassea and others.* 28th Aug. 1847. S. D. A. Decis. Beng. 480.—Dick.

138. The law which gives a special remedy, by summary suit within a year, for wrong suffered by illegal distraint,[2] does not abridge the right of action previously existing in respect of that injury, according to the Regulations. *Joy Chundur Chuckerbutty and others* v. *Sheikh Mungul.* 10th May 1849. S. D. A. Decis. Beng. 147.—Dick, Barlow, & Colvin.

138 *a.* A suit to set aside a sale of lands for arrears of revenue must be instituted within one year from the date of the sale becoming final and

[1] In the case of *Tubeeb Shah* v. *Budder Ooddeen,* 3 S. D. A. Rep. 162, two Judges held that it was necessary for the claimant to state distinctly and specifically, in his plaint, the precise nature of the fraud or violence by which the property in dispute had been acquired by the adverse party. Two other Judges held that it was sufficient if the fraud or violence could be clearly gathered from the whole tenor of the plaintiff's declaration. Another Judge (Turnbull) in another case, *Karuna Mai* v. *Jai Chandra Ghos,* 5 S. D. A. Rep. 42, seems to have entertained a similar opinion. In the case of *Syud Hosein Rezza* v. *Ameer-oon-Nissa,* quoted in the preceding *placita,* two Judges (Rattray & Tucker) were of opinion that the special law, Reg. II. of 1805, must be pleaded; and a third Judge (Barlow), in that very case, considered it incumbent on the plaintiffs, if the plea of fraudulent possession is to be urged for *laches,* distinctly to set forth, in their plaint, that they come into Court under the provisions of Sec. 3. of Reg. II. of 1805. The Western Court (present Mr. H. Lushington) gave the same construction to the law of 1805, on the 9th Sept. 1847, in the case of *Prag Tewaree and others* v. *Benee Tewaree,* 7 S. D. A. Rep. 403, note. It must be remarked, that in the above case of *Mt. Ommut-o-Zuhra Begum* v. *Lootfoollah Khan,* the principle above-mentioned, though laid down, was not enforced, on account of the conflict of opinions, and as the suit was instituted long before the opinions recorded in *Syud Hosein Rezza* v. *Ameer-oon-Nissa,* and the Court accordingly proceeded to investigate the nature of the defendant's acquisition of the property in litigation.

[2] Reg. V. of 1812, Const. 467.

conclusive. *Durga Ray and another, Petitioners.* 18th Sept. 1850. 3 Sev. Cases, 13.—Dick.

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9. *Practice.*

139. A plea of limitation must be established by the party advancing it, and the proof rests wholly with such party. *Goudree Pauree and another* v. *Ruttun Pauree and others.* 2d Dec. 1847. S. D. A. Decis. Beng. 622.—Hawkins.

140. The defendant pleaded that the Court's cognizance of a claim was barred by the law of limitation. The plaintiff met this plea by another, to the effect that his suit, intermediately brought, had been struck off under Act XXIX. of 1841. Held, that as the law of limitation had been infringed, and as the asserted disposal of the "suit intermediately brought" under Act XXIX. of 1841 could not be admitted to form a break in the period to be calculated between the cause of action and the institution of the suit (see Sec. 2. of the Act), it was manifestly just and proper that the plea of the defendant should have been carefully weighed before judgment was passed against him. *Gobind Chund Muhajun* v. *Mohummud Fyz Bukhsh.* 6th April 1848. S. D. A. Decis. Beng. 291.—Rattray.

141. If a suit be barred by the rule of limitation, the Court is bound to take notice of this circumstance, and enforce the law, even when not urged in the pleadings. *Baboo Rama Singh and others* v. *Baboo Dhyan Singh and others.* 26th April 1849. S. D. A. Decis. Beng. 125.—Barlow & Colvin. (Dick dissent.)

142. A plea of the law of limitation should be taken notice of by an Appellate Court, even if not brought forward in the Court of first instance. *Surswaty* v. *Narraina Embrandy.* 23d July 1849. S. A. Decis. Mad. 31.—Thompson.

143. A question as to the right of possession between two parties, *A* and *B*, on the ground of one of the parties, *A*, having had possession of the land for upwards of twelve years, cannot be raised as a question *upon the law of limitation of suits*, in a case in which *A* sues, as plaintiff, to recover the land, in consequence of his having been *already, but improperly, dispossessed by a Settlement Officer*, who has held *B* to have the better title. *Permessur Dial and others* v. *Thakoor Pershad and others.* 20th Dec. 1849. S. D. A. Decis. Beng. 477.—Barlow, Colvin, & Dunbar.

144. The question of limitation must be disposed of before the merits of the case are entered into. *Brojosoondree Dasee and others* v. *Ram Sunkur Raee and others.* 28th March 1850. S. D. A. Decis. Beng. 79.—Barlow & Colvin.

145. The intention of the Circular Order of the 12th March 1841 is, not to deprive an appellant who appeared in the Court of first instance, though too late to plead in answer to that plaint, of the power of prosecuting his appeal upon the record as made upon the pleadings and evidence for the plaintiff, but only to affect the right of appeal of a party who had made no appearance in the Lower Court. *Abbas and others* v. *Roop Chand Sircar and others.* 30th March 1850. S. D. A. Decis. Beng. 83.—Colvin & Dunbar.

146. If a Judge be satisfied that a suit is barred by the law of limitation, he cannot, under the Circular Order No. 33 of the 13th Sept. 1843, enter into the merits of the case. *Mt. Ramdoee and others* v. *Ajeetram Sahoo and others.* 15th Feb. 1849. S. D. A. Decis. Beng. 38.—Dick, Barlow, & Colvin. *Dwarkanath Raee* v. *Sham Chand Baboo and others.* 25th April 1850. S. D. A. Decis. Beng. 153.—Barlow & Colvin.

LIQUIDATED DAMAGES.—See SHIP, 1.

LITIGIOUS SUITS.—See FINES, 4 *et seq.*

LUNATIC.—See CRIMINAL LAW, 43 *et seq.* 146 *et seq.*

MAÁFÍ.—See LAND TENURES, 9.

MAAFÍDÁR.—See PRE-EMPTION, 7.

MAGISTRATE.

I. GENERALLY, 1.
II. FALSE IMPRISONMENT BY.—See FALSE IMPRISONMENT, 2, 3.
III. JURISDICTION AS TO.—See JURISDICTION, 18. 55, 56.
IV. CRIMINAL.—See CRIMINAL LAW, 157, 158.

I. GENERALLY.

1. A proceeding of the Joint Magistrate in the year 1831, held under Reg. XV. of 1831, adjudging possession of certain land, which possession had never been made the subject of a civil action, was upheld as of equal force with the judicial award of a Civil Court. *Rajah Jymungul Singh* v. *Baboo Holas Singh.* 16th Dec. 1846. S. D. A. Decis. Beng. 422.—Rattray.

MAHR.—See HUSBAND AND WIFE, 4, 5.

MAHR MAUJJIL.—See HUSBAND AND WIFE, 5.

MAHR MUWAJJAL.—See HUSBAND AND WIFE, 5.

MAINTENANCE.

I. GENERALLY, 1.
II. WHEN DISALLOWED, 10.

I. GENERALLY.

1. In a suit by a widow to fix the amount of her maintenance, adjudged to her by a decree passed seventeen years before, and to recover arrears of the same for twelve years previous to the date of suit, judgment was given in her favour for the period not barred by the law of limitation, but without interest, on the score of delay in coming forward. *Deel Singh and others* v. *Mt. Gunsham Kowur.* 6th Sept. 1847. S. D. A. Decis. Beng. 517.—Rattray, Dick, & Jackson.

2. The sons of *A*, who had succeeded to his ancestral estates, being implicated in a rebellion against the state, such estates were confiscated. Held on appeal, by the Judicial Committee of the Privy Council, that the forfeiture did not affect the rights of *A*'s widow, and that she was entitled to maintenance out of the ancestral estate, notwithstanding such forfeiture. *Mt. Golab Koonwur and others* v. *The Collector of Benares and another.* 17th Dec. 1847. 4 Moore Ind. App. 246.

3. The Hindú law which declares that a widow is entitled to be maintained out of the estate of her deceased husband, which becomes his son's, makes it her duty to live with him, and, failing relations of her husband, she is to reside with her own. *Tickany Ramalutchmy* v. *Tickany Teroomalaroyadoo and others.* 2d July 1849. S. A. Decis. Mad. 1.—Hooper & Morehead.

4. But if she cannot agree with him or them, she is entitled to de-

mand an allowance in money for her separate maintenance. *Ibid.*

5. Where a widow sued her late husband's brothers for a money allowance as a maintenance, and it was not proved in evidence that they were possessed of any paternal property; the Sudder Adawlut held, that though the widow of a joint family is entitled by the Hindú law to receive maintenance from the surviving members of that family; and though it had been the practice of the Courts, in accordance with the Hindú law, to award to widows sums of money under such circumstances, to be paid to them by the family of their husbands; yet in cases where, as in the present instance, there was no proof of possession of paternal estate by the husband's brothers, or that they were otherwise in such circumstances as would justify the Court in calling upon them to make a money allowance to their sister-in-law, they could only be required to support her should she reside with them, and remain under their protection. *Mamedala Vencutakristniah Puntooloo and others* v. *Maumedala Venkatarutnamah.* 2d July 1849. S. A. Decis. Mad. 5.—Thompson & Morehead.

6. Where money had been deposited with *B* by the brother of *A*, a widow, for *A*'s maintenance, under an agreement, executed by *B*, that *A* was to receive the interest thereof, and *A* claimed the surrender to her of the principal, as being the self-acquired property of her late husband; it was held, that *A* had no claim to the principal, as the deed on which her claim was founded only gave her a life interest in such principal, which, on her death, was to be inherited by her nephews, the sons of her brother. *Butchaboyummah* v. *Samarow and others.* 2d July 1849. S. A. Decis. Mad. 8.—Morehead.

7. *A* deposited money with *B* under an agreement that the interest thereof was to be paid to *A*'s sister, a widow, for her maintenance. *B* died, leaving a brother *C*; and it was held, that *C* was responsible for the payment of the widow's maintenance. *Ibid.*

8. The acceptance, for some time, by a Hindú widow, of an allowance, besides apparel and food, does not bar her right to demand a proper and suitable allowance for maintenance according to the circumstances of the family. *Hursoondri Gooptia* v. *Nurgobind Sein and others.* 21st Aug. 1850. S. D. A. Decis. Beng. 422.—Dick, Barlow, & Colvin.

9. Nor, *if a less allowance be offered to her than she has a right to expect*, does she forfeit her right to such maintenance by leaving her husband's house and seeking shelter under the roof of her own parents.[1] *Ibid.*

II. WHEN DISALLOWED.

10. A married woman having been expelled from her husband's house for immorality, sued him for maintenance. Held, that as the husband was a member of a joint undivided family, she had no right to claim any portion of his property for her maintenance.[2] *Koonjun Lall* v. *Mt. Toolseea.* 29th May 1848. 3 Decis. N. W. P. 172.—Tayler, Thompson, & Cartwright.

11. Maintenance claimed by a widow from her husband's relations was disallowed, as she was held to have forfeited it under the Hindú

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[1] A certain sum was accordingly awarded to her as maintenance by the decree of the Court, affirming the decision of the Principal Sudder Ameen; but the payment of such allowance was made conditional on her return to the protection of her late husband's family.

[2] This is without reference to the wife's alleged bad character. If she were a virtuous woman she would still have no right to claim maintenance from her husband's undivided property; but if virtuous, she has a right to one-third of her husband's separate property if he be wealthy, and to food and raiment if he be poor.

law, by quitting their house and going to that of her father. *Oojul Munee Dasee* v. *Jygopal Chowdree and others.* 1st June 1848. S. D. A. Decis. Beng. 491.—Hawkins & Currie. (Jackson dissent.)

MAJORITY.—See INFANT, 8, 9.

MAKBARAH. — See RELIGIOUS ENDOWMENT, 18.

MÁLGUZÁRÍ. — See LAND TENURES, 10 *et seq.*

MÁLIK.—See LAND TENURES, 24; PRE-EMPTION, 7, 8.

MÁLIKÁNEH.

1. Where the plaintiff sued to establish his right to *Málikáneh* purchased by him; it was held, that the question of his right could be entertained by the Courts, though the right of the sellers had been denied, and had not been investigated and established. *Molovy Hamid Russool and another* v. *Government and others.* 6th Aug. 1845. S. D. A. Decis. Beng. 261.—Barlow.

2. Held, that under Sec. 5. of Reg. VII. of 1822, the question of *Málikáneh* rests exclusively with the Revenue authorities under the control of the Government itself, and is not a point that can be contested in the Civil Courts. *Collector of Bhagulpore* v. *Shewuk Ram.* 26th July 1847. S. D. A. Decis. Beng. 367. —Rattray, Dick, & Jackson.

3. In a suit for *Málikáneh*, the Collector ought to be made a defendant, with whom the right to *Málikáneh* would be contested.[1] *Pokhnaraiun and others* v. *Goneish Dutt and others.* 4th March 1846. S. D. A. Decis. Beng. 93.—Barlow.

4. In a suit for *Málikáneh* of several villages, held by several persons, the amount of *Málikáneh* of each village, and the liability of each defendant, should be specified in the decree. *Maharaja Rooder Singh* v. *Shaikh Jafur Ally and others.* 5th Jan. 1847. S. D. A. Decis. Beng. 1.—Tucker.

5. Holders of a *Birt* tenure in a *Talook* are not exempted from payment of *Málikáneh* to the *Talookdár* merely because, under an engagement made by them with Government, they may pay a larger sum as revenue than they formerly paid to the *Talookdár* as *Birt*-money, unless there be some special stipulation to that effect in the *Birt Putr* deed. *Baboo Shumsheer Suhae* v. *Achumbit Tewaree and others.* 8th Feb. 1847. 2 Decis. N. W. P. 27.—Tayler, Thompson, & Cartwright.

6. *Málikáneh* cannot be awarded by the Civil Courts when it has not been sanctioned by the Settlement Officer; as, by Cl. 1. of Sec. 10. of Reg. VII. of 1822, the power of making arrangements for the distribution of the profits of an estate is vested in the Government rather than in the Civil Courts. *Baboo Shumshere Suhaee* v. *Achumbit Tewaree and others.* 25th Nov. 1848. 3 Decis. N. W. P. 399.—Tayler & Cartwright.

7. A party possessing an admitted right only to a certain share, in acknowledgment of a *Málikáneh* title, of the rents of a *Maháll*, cannot claim, for the security of such right, to obtain separate possession of the *Maháll* in the proportion of that share. His right extends only to the inspection and check of the accounts of the collections from the *Maháll*. *Bhya Bhugwan Deo* v. *Syud Abool Hosein Khan and others.* 14th May 1850. S. D. A. Decis. Beng. 200.—Dick, Jackson, & Colvin.

[1] Reg. VIII. 1793, s. 44.

MANAGER.

I. Hindú Law, 1.

II. In the Courts of the Honourable Company, 4.

III. In the Supreme Courts.—See Practice, 31 *set eq.*

I. Hindú Law.

1. Semble, the management of property left by will for religious or charitable purposes will descend to the children by concubines of the manager in default of issue by marriage. *Sree Cower and another* v. *Bolaky Sing and others.* 17th July 1793. East's Notes, Case 128.

2. It is not requisite for the head or other member of a *Tarwaad,* who may have the management of property, to obtain the consent of all, or any of the other members to sign a bond. *Chowcaren Orkattery Coonhy Ahmond and others* v. *Narsimmajee Mookhtar.* 16th July 1849. S. A. Decis. Mad. 17.—Morehead.

3. The *Stanígam Mírásí* of a *Pagoda* situated at Combaconum in Tanjore is not an hereditary office according to Hindú usage. *Sashiengar* v. *Cotton and others.* 27th Sept. 1849. S. A. Decis. Mad. 64.—Thompson & Morehead.

II. In the Courts of the Honourable Company

4. Where it was clearly established that the defendant was acknowledged, for a course of years, by the plaintiffs as manager on their part; it was held, that his acts must be considered binding on them. *Rogonath Ray and others* v. *Muddun Mohun Shah and others.* 18th Dec. 1845. S. D. A. Decis. Beng. 468.—Tucker, Reid, & Barlow.

5. Where the plaintiff, under an *Ikrár námeh,* engaged to manage the estate of the defendants, and was afterwards admitted as a *Vakíl* in the Sudder Court; it was held, that the mere admission to practise as a *Vakíl* did not vitiate the engagement, as the defendants were at liberty to dismiss the plaintiff, if they considered his employment as a *Vakíl* incompatible with the proper performance of his previous engagement, and they had not done so. *Imlach* v. *Raja Rajinder Nurain Roy and others.* 26th Aug. 1846. S. D. A. Decis. Beng. 318.—Reid, Dick, & Jackson.

6. Where a *Mukhtár* was engaged to manage an estate under an *Ikrár námeh* for two years seven months and ten days, and he continued to perform the duty for five years seven months and ten days; it was held, that he was entitled to receive remuneration for the whole time of his management, though no express re-appointment had taken place at the expiration of the time mentioned in the *Ikrár námeh. Ibid.*

7. The farmer of an estate under the Court of Wards was debited the expenses of collection by a *Sarbaráhkár* employed during part of a year before the period of the farmer's entering into possession. *Collector of Dinagepoor* v. *Mulua Mye Debbea.* 31st July 1847. 7 S. D. A. Rep. 376.—Tucker, Barlow, & Hawkins.

8. Where a manager of joint property sued separately on behalf of himself and the other heirs for money due to the estate on a bond, the Court gave a decree in his favour, but provided that, on the realization of the amount decreed, it should be held to the credit of all the heirs until the settlement of any disputes amongst them as to the right of receiving it. *Kishen Kaminy and others* v. *Sreenath Bose and others.* 29th Oct. 1849. S. D. A. Decis. Beng. 400. — Barlow, Colvin, & Dunbar.

MÁNIYAM.—See Land Tenures, 7.

MARRIAGE.—See Criminal Law, 159; Husband and Wife, *passim*.

MARRIAGE FEES.—See Dues and Duties, 4.

MARRIAGE CONTRACT.—See Husband and Wife, 9.

MARRIAGE SETTLEMENT.—See Husband and Wife, 8.

MASTER.

1. An order made by the Judges of the Supreme Court at Madras, dismissing the Master of that Court from his office for alleged official misconduct in the taxation of a bill of costs was reversed upon appeal, by the Judicial Committee of the Privy Council. *In the matter of Minchin.* 4th March 1847. 6 Moore, 43. 4 Moore Ind. App. 220.

2. Such an order, being made by the Court at its own instance, is not an appealable grievance within the Madras Charter of Justice.[1] *Ibid.*

MAUJJIL.—See Husband and Wife, 5.

MAURÚSÍ.

1. The mere fact of an estate being *Maurúsí* does not prevent a sharer in such estate from alienating his share. *Sheo Gholam* v. *Ram Ruttun.* 16th Sept. 1847. 2 Decis. N. W. P. 339.—Tayler.

[1] An appeal having been allowed by the Court below, and referred by Her Majesty to the Judicial Committee of the Privy Council for adjudication in the ordinary way, their Lordships, though of opinion that there existed no Charter right of appeal, thought it a fit case for the allowance of a special appeal.

MERGER.—See Agreement, 1.

MESNE PROFITS.[2]

I. Generally, 1.
II. Amount and Rate of, 14.
III. For what period allowed, 27.
IV. Interest on.—See Interest, 5. 7a. et seq. 11.
V. Action for.—See Action, 107.

I. Generally.

1. Where mortgagees were in possession, and the estate was let in farm by the Collector, owing to its having fallen into balance during their management; it was held, that the mortgagees were liable to the mortgagor for the period during which the Collector had farmed the estate. *Sheodutt Singh* v. *Bunseedhur and others.* 28th May 1845. Quoted in 3 Decis. N. W. P. 417. *Rajah Juggut Singh and another* v. *Kasim Ali and others.* 23d Dec. 1848. 3 Decis. N. W. P. 417.—Tayler.

2. Illegal collections on account of duties or taxes cannot be taken into account in the adjustment of mesne profits. *Radha Mohun Ghose Chowdry, Petitioner.* 10th Feb. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 75.—Reid.

3. A sale of a *Mukarrarí* tenure by the *Zamíndár* being declared to be illegal; it was held that the purchaser at such sale should be ousted, but that the mesne profits and the costs of the purchaser should be paid by the *Zamíndár*. *Rance Chundra Bullee Konwaree* v. *Gudadhur Banorjea and others.* 9th July 1846. S. D. A. Decis. Beng. 271.—Tucker, Reid, & Barlow.

4. A plaintiff claimed possession of *Mukarrarí* lands and mesne

[2] And see Mortgage, Pl. 82 *et seq.*

profits. The possession was decreed, but the mesne profits disallowed, it appearing that he had not been forcibly ousted from the lands, but had quitted them of his own accord, on account of an inundation which had rendered them unprofitable. *Bydenath Biswas* v. *Hurkalee Bideeah.* 9th Feb. 1847. S. D. A. Decis. Beng. 49.—Dick.

5. A farmer of land was held to be responsible, jointly with the disseisor, for mesne profits, he having been warned of the consequences of his illegal occupation. *Landale* v. *Muddun Thakur and others.* 24th Feb. 1847. S. D. A. Decis. Beng. 64.—Rattray.

6. An award of mesne profits was overruled on appeal, because the claim was not included in the plaint. *Rughobur Suhaee* v. *Mt. Tulashee Kowur and others.* 22d March 1847. S. D. A. Decis. Beng. 87.—Rattray, Dick, & Jackson.

7. Mesne profits accruing before a decision under Act IV. of 1840, and subsequently thereto, may be sued for together. *Dya Mye Chowdhrain and another* v. *Tara Purshad Raee and another.* 27th July 1847. S. D. A. Decis. Beng. 371.—Jackson.

8. In suing for mesne profits the plaintiff must be bound by his original valuation. *Ramdhun Majoolea and others* v. *Jyeram Chatterjea.* 21st Aug. 1847. 7 S. D. A. Rep. 387.—Tucker, Barlow, & Hawkins.

9. The plaintiffs, mortgagees, sued *A*, son and heir of the mortgagor, *B*, auction-purchaser of the mortgaged property when sold in execution of a decree obtained against *A*, and *C*, to whom *A* had made over his purchase. The plaintiffs sued, under a foreclosed mortgage, for possession of the lands, and mesne profits. Held, that *A*, *B*, and *C*, were jointly responsible for the mesne profits. *Hursahaee Singh and others* v. *Syud Mohummud Hosein and another.* 28th Aug. 1847. S. D. A. Decis. Beng. 479.—Tucker, Barlow, & Hawkins.

10. Mesne profits were made chargeable to parties who retained possession of lands after a decree of foreclosure had been reversed. *Ram Tuwukul Raee and others* v. *Uchee Lal and another.* 14th March 1848. S. D. A. Decis. Beng. 194.—Rattray.

11. A decree for *Wásilát* ought to state precisely the period from which it awards them. *Mt. Santee Munnee Dasee and another* v. *Ramkomar Bose.* 19th April 1848. S. D. A. Decis. Beng. 342.—Dick, Jackson, & Hawkins.

12. A separate claim for mesne profits may be admitted in regard to lands, the right to which was sued for before the issue of the Circular Order of the 11th Jan. 1839, without reference to the lapse of more than twelve years from the date of dispossession. *Sheikh Moula Buksh* v. *Ramkishun Misr.* 19th April 1849. S. D. A. Decis. Beng. 119.—Dick, Barlow, & Colvin.

13. Held, in interpretation of the provisions of Sec. 4. of Reg. XXXIV. of 1802, that in usufructuary mortgages, where the receipts do not exceed the rate of interest entered in the bond, provided such be not in excess of the legal rate, those receipts must be calculated as simple current interest, and cannot be considered as accumulating with compound interest towards the liquidation of the principal debt; and it was further held, that it is only where the receipts exceed the legal interest, or the rate mutually agreed upon, that any liquidation of the original debt can take place. *Lalpetta Vencatapaty Naidoo* v. *Rajah Bommarauze.* 1st July 1850. S. A. Decis. Mad. 27.—Hooper & Freese.

II. Amount and rate of.

14. Where plaintiffs had sued a great number of persons for *Wásilát* in a total sum, without specifying what was demandable from each, while the parties, from whom it was

said to be due, occupied separate portions of the estate, their claim was dismissed, because they had failed in detailing the specific sums which were said to be due to them from the several parties. *Jeye Kishen Singh and others* v. *Judonath Singh and others.* 14th May 1846. 1 Decis. N. W. P. 11.—Cartwright.

15. Where the Courts below decreed possession of certain lands to the plaintiffs, of which they had been dispossessed by the defendants, but refused to award *Wásilát* on the plea that the plaintiffs had not furnished sufficient data for fixing the amount; it was held, that this was contrary to the invariable practice of the Courts, as, should any doubts arise as to the amount of *Wásilát*, the same are determined by appointing an Ameen to ascertain the actual receipts in the *Mofussil.* A special appeal was admitted accordingly, and the case sent back with orders to ascertain the *Wásilát* from the time of the dispossession of the plaintiffs up to the date of the institution of the suit. *Deo Narain and another* v. *Shewun Pandy.* 28th May 1846. S. D. A. Decis. Beng. 207.—Tucker, Reid, and Barlow.

16. Mesne profits exceeding the amount originally claimed were awarded against a disseisor who had retained the collections in his own hands, and withheld his accounts. *Mahmood Ahmed Chowdry and another* v. *Obye Churn Banerjee.* 19th Aug. 1846. S. D. A. Decis. Beng. 315.—Reid, Dick, & Jackson.

17. Mesne profits of three years were taken as the basis of calculation in the absence of any direct proof. *Fuzl Kureem* v. *Hubeebool Hoosein and another.* 2d Dec. 1846. S. D. A. Decis. Beng. 405.—Reid, Dick, & Jackson.

18. Mesne profits of land previously decreed, were adjudged at a rate higher than that claimed, it being proved that the disseisors had subsequently introduced a more profitable cultivation. *Gujadhur Sing and others* v. *Ruffeeooddeen Hosein and others.* 18th Jan. 1847. S. D. A. Decis. Beng. 12.—Rattray, Dick, & Jackson.

19. In a suit for possession of an estate and *Wásilát* in virtue of a deed of sale, the plaintiff had neglected to specify the amount of *Wásilát* claimed. On a special appeal the plaintiff (special respondent) was nonsuited, although the defendants (special appellants) had not appeared or answered in the Court of first instance, nor urged any objection to the suit on that ground in their appeal before the Judge. *Munglee and others* v. *Doorjun.* 25th Jan. 1847. 2 Decis. N. W. P. 11.—Thompson & Cartwright. (Tayler dissent.)[1]

20. The omission by the plaintiff to mention the amount of *Wásilát* claimed before the institution of the suit, is a bar to the recovery of such *Wásilát*, with reference to the spirit of the Circular Order of the 11th Jan. 1839; and the Lower Court's orders awarding *Wásilát* for that period, were held to be erroneous, and reversed to that extent. *Sheikh Mehur Ali* v. *Izzut Ali and others.* 1st July 1847. S. D. A. Decis. Beng. 303.—Barlow & Jackson. (Rattray dissent.)[2] *Bhowannee Deen*

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[1] During the hearing of the special appeal in this case, the *Vakíl* on the part of the respondent, verbally signified to the Court his client's willingness to relinquish his claim to the *Wásilát* in question, provided the judgments of the Lower Courts were allowed to stand good in other respects; but the majority of the Court considered they were precluded from granting this indulgence, seeing that the only point upon which the special appeal was admitted, and upon which their decision was required, was as to the mode in which the plaintiff first brought his suit, and whether the plaintiff had or had not conformed to the law in this respect; and it was held, that no verbal concession, such as that offered at that stage of the proceedings, could be allowed to interfere with the determination of the point at issue. Mr. Tayler considered that the plaintiff ought to have a decree for possession of the estate.

[2] Mr. Rattray's objection was in favour

v. *Huheem and another.* 23d Sept. 1848. 3 Decis. N. W. P. 371. —Tayler, Thompson, & Cartwright.[3]

21. But it was afterwards held, that a claim for *Wásilát,* before plaint, distinctly preferred as from a date stated, though without specification of the amount, and payment of the proper fees, was liable to a nonsuit only, and not to entire rejection. *Kazee Usnud Ali and others* v. *Mt. Bechun.* 3d May 1849. S. D. A. Decis. Beng. 135.—Dick, Barlow, & Colvin.

22. In a suit for mesne profits against a co-sharer, who prevented the attaching Ameen from making collections, it is not necessary to prove the amount collected by the co-sharer. *Kalee Dass Neogee* v. *Unnoo Poornah Chowdryne and others.* 4th Feb. 1847. S. D. A. Decis. Beng. 38.—Tucker.

23. The Courts ought not to refuse to award *Wásilát* on the ground that the plaintiffs had not furnished sufficient *data* for fixing the amount; the practice being, that in cases where doubts arise as to the amount of *Wásilát,* the same are determined by appointing an Ameen to ascertain the actual receipts in the *Mofussil.*[2] *Joykishen Mookerjea and another* v. *Gudadhur Pershad Tewary and others.* 15th July 1847. S. D. A. Decis. Beng. 337.—Tucker.

24. Mesne profits cannot be awarded at a higher rate than that specifically claimed by the plaintiff in the Court of first instance.[3] *Bykuntnath Rae and others, Petitioners.* 14th Aug. 1847. 1 S. D. A. Sum. Cases. Pt. ii. 116.—Tucker, Barlow, & Hawkins.

24*a.* The award of mesne profits in execution of decrees must be restricted to the rate specified by the plaintiff in his plaint. *Gasper, Petitioner.* 11th Nov. 1847. 2 Sev. Cases, 403.—Hawkins.

25. In a suit for real property with mesne profits, inquiry into the amount of the latter may be postponed until the decision of the suit.[4] *Mt. Oomut-ool-Burkut and others, Petitioners.* 3d Feb. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 131.—Tucker, Barlow, & Hawkins.

26. A special appeal, praying for a nonsuit on the ground of the amount of mesne profits not having been stated in the plaint in a suit for land and mesne profits, was dismissed, as the suit was one instituted before the issue of the Circular Order of the 11th Jan. 1839. 23d May 1850. S. D.

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of the plaintiff. He did not think that the Circular Order quoted contained any thing, in letter or spirit, to prohibit the return of the proceedings to enable the plaintiff to supply the omission, and for a re-trial of the case upon its merits.

[1] In this case, as in that of *Munglee and others* v. *Doorjun,* the respondent's *Vakil* during the hearing of the special appeal, verbally stated his client's willingness to withdraw his claim to the *Wásilát* previous to the institution of the suit. That case is overruled by the present one, in conformity with the judgment of the Calcutta Court, in the case of *Sheikh Mehr Ali* v. *Izzut Ali,* which corresponds in principle with the opinion recorded by Mr. Tayler in the case of *Munglee* v. *Doorjun.*

[2] And see *supra,* Pl. 15.

[3] But see *supra* Pl. 16. 18.

[4] But the period for which the mesne profits are recoverable must be specified. See the Case of *Ramkoomar Chuckerbuttee and others* v. *Ram Ram Bhuttacharjee and others,* 6 S. D. A. Rep. 306. It will be observed that the above decision is not opposed to the precedent of *Sheeb Chunder Roy and another* v. *Hurmohun Roy and others,* 6 S. D. A. Rep. 305, in which the decree reversed was altogether a general one, merely declaratory of right, leaving both the quantity of land and the amount of mesne profits to be ascertained in execution of the judgment. The Principal Sudder Ameen refused to decide upon the above case without a prior adjustment of mesne profits, on the ground of the difficulty in adjusting the costs of suit, should the plaintiffs, after obtaining a decree, be found entitled to a less amount of mesne profits than they had claimed; but it must be remarked, that an application for review of the order in regard to costs is always open to the party charged with costs, should the amount of mesne profits prove, on inquiry, to fall, to any great extent, short of the amount sued for. The refusal, therefore, of the Principal Sudder Ameen, on such grounds, was improper and unnecessary.

A. Decis. Beng. 221.—Dick, Jackson, & Colvin.

III For what period allowed.

27. Usufruct of land claimed from the institution of a suit for the land, cannot be awarded from the date of dispossession, such being prior to the institution of the suit. *Durbijei Singh and another* v. *Nadir Bibi.* 30th April 1846. S. D. A. Decis. Beng. 172.— Rattray, Tucker, & Barlow.

28. In a suit for *Wásilát* and interest thereon, brought about six years after the date of the decree awarding possession of the land, such *Wásilát* were adjudged from the date of dispossession, more than twenty years previous to the institution of the suit, but without interest.[1] *Rajah Anundnauth Rai* v. *Dwarkanath Thakoor and others.* 19th May 1847. S. D. A. Decis. Beng. 157.—Dick, Jackson, & Hawkins.

29. A separate claim for mesne profits before the issue of the Circular Order No. 29 of the 11th Jan. 1839 was adjudged from the date of dispossession. *Ibid.*

30. A widow made over her husband's half-share of a *Talook* to his cousin, by a deed of relinquishment, which was disputed by her mother and daughter, but upheld during the lifetime of the widow, but not so as to affect her husband's heirs after her death. Pending the litigation, the rights of the cousin were sold for a defaulting stamp-vendor, for whom he became surety, and the purchaser took possession of the entire *Talook.* Subsequently the widow instituted a suit against the purchaser for her half-share, and, dying, was succeeded by her grandsons, sons of her daughter. The Lower Courts decreed the estate to the grandsons, but refused to give them *Wásilát* from the death of the widow. Held, that the grandsons were entitled to *Wásilát*, but from the death of the widow only, and not from the institution of the suit by her, inasmuch as their title, as the heirs of the husband, commenced on her death, up to which time her life interest in the estate belonged to her husband's cousin. *Russik Lal Sein and others* v. *Collector of Calcutta and others.* 1st July 1848. S. D. A. Decis. Beng. 627. — Tucker, Barlow, & Hawkins.

31. In a claim for possession of property and for *Wásilát*, the plaintiffs included *Wásilát* for a period when the defendants were not in possession of the property claimed. Held, that this was not a sufficient ground for a nonsuit. *Debee Dehul and others* v. *Judobeer Singh and another.* 9th March 1848. 3 Decis. N. W. P. 77.—Tayler.

32. Mesne profits were allowed only from the date of suit, and not of dispossession, the plaintiffs having remained silent for eleven years. *Gopaul Lal Thakur* v. *Ram Kishwur Ghose and others.* 5th April 1848. S. D. A. Decis. Beng. 285. —Dick, Jackson, & Hawkins.

33. *Wásilát* were only allowed from the date of the plaint where there was great delay, for which no satisfactory reason was given, in bringing the suit. *Kashee Chundur Raee and others* v. *Noor Chundra Dibeea Chowdrain and another.* 18th April 1849. S. D. A. Decis. Beng. 113.—Dick, Barlow, & Colvin.

34. Where a plaintiff sued for certain lands, but did not claim mesne profits also, and the Lower Courts awarded mesne profits from the date of dispossession; it was held, that this was contrary to the Circular Order of the 11th Jan. 1839 and the practice of the Courts, and that mesne profits from the date of the suit only ought to have been awarded. *Hoorul Misr and others* v. *Chundur Dut Singh and others.* 23d Aug.

[1] And see the Case of *Gooroopershad Fotedar* v. *Komulakunt Bhose.* 6 S. D. A. Rep. 52. See also *supra* Pl. 12.

1849. S. D. A. Decis. Beng. 363. —Jackson.

35. In a suit for possession of land and for mesne profits, the parties, whilst the suit was pending, agreed to refer the matter to arbitration, and decrees were eventually passed in favour of the plaintiffs on the basis of the award, but adjudging mesne profits which had accrued previously to the institution of the suit, although none were specified in the award. Held, that the plaintiffs were only entitled to mesne profits from the date of the institution of the suit. *Muglee and another* v. *Pursa and others.* 8th July 1850. 5 Decis. N. W. P. 158.—Begbie, Deane, & Brown.

MÍLÁ.—See Action, 123.

MINOR.—See Infant, *passim.*

MÍRÁSÍ.

1. Held, by the Sudder Dewanny Adawlut, that *Mírás* land, not being held under service tenure, is therefore not liable to the limitation contemplated in Sec. 20. of Reg. XVI. of 1827. *Duttoo Wullud Essujee* v. *Mulkappa.* 29th June 1848. Bellasis, 88.—Bell, Simson, & Hutt.

2. The Government Officers have not authority unreservedly to dispose of any lands in a *Mírási* village that may be left waste for a period of years. *Ramanooja Iyengar and another* v. *Peetayen and others.* 17th Dec. 1850. S. A. Decis. Mad. 119.—Hooper & Morehead.

MOCUDDIM.—See Limitation, 120.

MOCUDDIMÍ.—See Limitation, 120; Practice, 109.

MOCURRURÍ.—See Land Tenures, 22 *et seq.*; Mesne Profits, 3, 4; Sale, 32. 102.

MOHANT.—See Religious Endowment, 7. 13 *et seq.*

MOONSIFF, JURISDICTION OF.—See Jurisdiction, 100 *et seq.*

MORTGAGE AND CONDITIONAL SALE.

I. Hindú Law, 1.
II. Muhammadan Law, 3.
III. In the Supreme Courts, 5.
IV. In the Courts of the Honourable Company, 7.
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12. *Practice*, 88.
13. *Interest on Mortgages.*—See *Interest*, 35 *et seq.*
14. *Lease by way of Mortgage.* —See *Lease*, 14*a*, 15.

I. Hindú Law.

1. Whenever the same property has been mortgaged to two distinct parties, the one in possession of the property by the Hindú law is entitled to a preference in supercession of any priority of mortgage to the other. *Kundoojee Bin Hybutrao* v. *Ballajee Dennanath.* 31st Jan. 1840. Bellasis, 5.—Marriott, Bell, & Greenhill.

2. A deed of purchase, with proof of possession of the property, is preferable to a deed of mortgage of prior date, but without possession. *Gopal Sudasew* v. *Dinkur Abbajee.* 6th Feb. 1845. Bellasis, 58.—Bell, Simson, & Browne.

II. Muhammadan Law.

3. A Muhammadan died leaving a widow and child. The latter was acknowledged by the former as sole heir to his deceased father's estate, without any reservation on account of her dower, and she signed a *Warásat námeh* (or acknowledgment of heirship). The son obtained possession of the estate under this *Warásat námeh*, and borrowed money on pledge of the estate. The widow sued her son for her dower. Held, that although, according to usage, a claim for dower should be satisfied in preference to other claims of whatever nature, yet, under the circumstances, it was consonant both with law and equity to consider that the mortgagees had a prior claim to that advanced by the widow. *Mt. Kulsoom Khanum* v. *Mirza Kurban Ali and others.* 5th Nov. 1845. S. D. A. Decis. Beng. 317.—Rattray & Reid.

4. A mortgagee, a Muhammadan, may transfer his rights and interests in a mortgage held by him upon real property; and the Muhammadam law cannot be applied to such cases.[1] *Sheikh Mokeem Sircar* v. *Turee Bibi and others.* 14th June 1848. 7 S. D. A. Rep. 511.—Dick, Jackson, & Hawkins.

III. In the Supreme Courts.

5. A mortgagee (having previously entered into receipt of the rents and profits of the mortgaged premises) took the usual account of debt and interest by the registrar, who appointed that day six months for payment thereof. The defendant having made default, the decree for foreclosure was made absolute. Held, that such decree was erroneous, and that there should have been a reference to the Master to take an account of the rents and profits received by the mortgagee. *Mutty Loll Seal* v. *Joygopaul Chatterjee.* 1st July 1847. Taylor, 105.

6. Where two persons are tenants in common of an indigo factory, and cultivate together, and one mortgages his share and becomes insolvent, and his assignees refuse to carry on the cultivation, and the mortgagee does not advance the half share of the funds for the cultivation, he, the mortgagee, cannot, after the crop is removed, have an account of the amount of produce and profits against the tenant in common, who has advanced the whole of the funds for the cultivation. *Ventura* v. *Richards and others.* 22d July 1849. 1 Taylor & Bell, 66.

IV. In the Courts of the Honourable Company.

1. *Generally.*

7. Held, that a house being mortgaged, the mortgage title holds good to the site on which it is built, even after its demolition, there being no special reservation to the contrary. *Suggojee Bin Wittojee* v. *Hybuttee Bin Ballajee and another.* 30th March 1841. Bellasis, 14.—Marriott, Greenhill, & Bell.

8. Action by a mortgagee to recover principal and interest. Decree

[1] In this case the mortgagee had sold his right before he had sued for possession, although he had got the usual order for that purpose as under a foreclosed mortgage. The Lower Courts decided, according to the rules of the Muhammadan law, that the mortgagee could not sell that of which he had not possession; but the Sudder Dewanny Adawlut held, that that law could not be applied, this being a case of contract, and therefore not coming within the provisions of Sec. 15. of Reg. IV. of 1793, and Secs. 8. & 9. of Reg. VII. of 1832. But see *infra*, Pl. 70.

in favour of the mortgagee, on proof of failure on the part of the mortgagor to fulfil the condition mutually agreed upon, of transferring the mortgaged property to the occupancy of the mortgagee. *Rajah Gopal Surn Singh* v. *Martindell.* 27th Sept. 1841. 7 S. D. A. Rep. 47. —Tucker, Lee Warner, & Barlow. *Mirza Kaikobad and others* v. *Gholam Ullee Khan and others.* 16th May 1846. 1 Decis. N. W. P. 12. —Cartwright.

8 *a.* A deed of mortgage and conditional sale contained a covenant for possession by the mortgagee during the mortgage term. Possession was withheld, though the mortgagor received the mortgage money. Held, that an action would lie by the mortgagee against the mortgagor for recovery of the principal and interest, money advanced. *Raja Oodit Purkash Sing* v. *Martindell and another.* 3d July 1849. 4 Moore Ind. App. 444.

9. The mortgage of a piece of ground implies, in the absence of any special agreement to the contrary, the mortgage of every thing grown on it. *Bhow Bin Gopeeram Mallee* v. *Abbajee Bin Appajee Goaroo.* 29th Nov. 1844. Bellasis, 56.— —Bell, Hutt, & Browne.

10. Where a mortgagor had been restored to possession of his estate by a summary judicial order, and it appeared that the interest only of the loan had been liquidated by the usufruct of the property whilst in the possession of the mortgagee, who afterwards sued for the principal, the full amount of the principal was decreed to the mortgagee, with all costs. *Baboo Munooruth Singh* v. *Gyan Chund Sahoo and others.* 20th Feb. 1845. S. D. A. Decis. Beng. 30. —Rattray.

11. In the absence of all intention to evade the usury law, a mortgagor cannot sue to dispossess a mortgagee from property pledged for a stipulated period, until the expiration of the period agreed upon in the deed of mortgage. *Anrood Singh* v. *Rajah Dummur Singh.* 26th Sept. 1845.—Tayler, Thompson, & Davidson. (Not reported.) *Oomrao Begum* v. *Inderjeet and others.* 26th July 1848. 3 Decis. N. W. P. 252. —Tayler, Thompson, & Cartwright.

12. A mortgage of a minor's share of an estate by his legal guardian, entered into *bonâ fide*, and for the benefit of the property, was held to be a legal and valid transaction. *Ram Lochun Raee* v. *Ramunee Mohun Ghose.* 5th Nov. 1846. S. D. A. Decis. Beng. 371.—Reid, Dick, & Jackson.

13. A mortgagee cannot sue for a division of a joint undivided estate, the proprietors alone being the persons contemplated by Reg XIX. of 1814, who are competent to make such an application. *Nuwab Mahomud Wally Daud Khan* v. *Mahomud Ebadoollah Khan.* 8th Feb. 1847. 2 Decis N. W. P. 32.— Tayler, Thompson, & Cartwright.

15. An estate was mortgaged under a deed of conditional sale: the mortgagors admitted the deed, but contended that it had become void by reason of the mortgagee not having fulfilled its conditions. Subsequently the mortgagee brought a suit against the mortgagors for refund of the money lent, but the mortgagors had, two days previous to the institution of the suit for the money, sold the property to a third party. The mortgagors confessed judgment, and a decree was passed in favour of the mortgagee, whereupon he instituted a suit to set aside the new deed of sale, and to bring the estate to sale in satisfaction of his decree. Held, that as the mortgagee had foregone the option of suing to enforce the original contract of conditional sale, by demanding possession of the estate under the terms of such contract, and had sued only for recovery of the money lent, he had no claim over the property beyond that of a simple creditor. *Net Ram* v. *Ramsuhae.* 5th July 1847. 2

Decis. N. W. P. 199. — Tayler, Begbie, & Lushington.

16. In a suit by the purchaser for possession of mortgaged property situated in the *Mofussil*, and sold publicly by the mortgagee after obtaining the judgment of the Supreme Court on the mortgage bond, the claim was dismissed as founded upon a transaction opposed to the *Mofussil* law of mortgage.[1] *Bhuwanee Churn Mitr* v. *Jykishen Mitr and another*. 24th July 1847. 7 S. D. A. Rep. 362.—Tucker, Dick, & Hawkins.

17. In a case of *Bay bil Wafá* the conditional purchaser has not the option of suing to recover the money lent, or to be put in possession of the property pledged, unless good and sufficient cause be shewn for pursuing the former mode of procedure.[2] *Rajah Isreepurshad Narain Singh Bahadoor* v. *Rae Ghirodhur Lal.* 11th Jan. 1848. 3 Decis. N. W. P. 18. —Tayler, Cartwright, & Begbie.

18. And an action for the recovery of money under a conditional deed of sale, will not lie on the plea of the property having been put up for sale, such not constituting a good and sufficient cause for the conditional purchaser to sue for the money.[3] *Busraj* v. *Achybur Tewaree and another*. 19th June 1848. 3 Decis. N. W. P. 209.—Tayler, Thompson, & Cartwright.

19. But in cases of *simple mortgage*, he has the election of suing either for possession or for the money lent. *Banee Behadoor Singh* v. *Gosain Phoolgeer*. 17th Aug. 1847. 2 Decis. N. W. P. 269.—Tayler, Begbie, & Lushington.

20. Mortgages of service *Watans*, prior to the introduction of the Bombay Code of 1827, can only be held good and valid for the lifetime of one incumbent, under the provisions of Sec. 20. of Reg. XVI. of 1827, and the interpretation thereon. *Baee Rutton* v. *Mansooram Khooshalbhaee*. 21st June 1848. Bellasis, 93.—Simson & Hutt. (Bell dissent.)

21. A deed of conditional sale was declared to be void, where it appeared that the greater portion of the sum stipulated to be paid was paid to different individuals, (on different dates), months after the date of the deed; paid, too, on divers accounts, no mention of, or allusion to which was found in the deed, which, on the contrary, bore the acknowledgment of a full payment of the amount for which it was granted. *Baboo Girdharee Singh and another* v. *Sheikh Gholam Hosein and another*. 7th Aug. 1848. S. D. A. Decis. Beng. 747.—Rattray, Dick, & Jackson.

22. By the terms of a mortgage deed (*Bhóg Bandak*), the mortgagee was, to receive a certain portion of

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[1] In this case the majority of the Court (Tucker & Hawkins) laid down the Regulation law with regard to mortgages in a passage which I think it desirable to quote. It is as follows :—" There are three species of mortgage known to our Regulations and the practice of our Courts:—*First*, the simple usufructuary mortgage, in which the right of redemption is reserved to the mortgagor at any time, on liquidation of the debt, either from the usufruct, or by a cash payment, or deposit in Court.—*Secondly*, cases in which the land is given in collateral security for the debt, without enjoyment of the usufruct by the mortgagee, or any condition of the absolute transfer of the property pledged to the mortgagee in case of non-payment. In such cases the mortgagee brings his action for the recovery of the loan; and, in execution of the decree, proceeds, through the Court, against the property upon which he has a prior lien.—*Thirdly*, the *Bye-bil-wuffa*, or *Kutkubaleh*, mortgage, or conditional sale, in which, if the debt be not paid as stipulated, the mortgagee proceeds, according to prescribed rules, to convert the conditional into an absolute sale. In the first case the property of the mortgagor cannot be transferred. In the last two cases the transfer can only be effected by the immediate act of a Court of Justice."

[2] Construction No. 898; and see the Case of *Mohanund Chuturjeea* v. *Govindnath Roy*. 7 S D. A. Rep. 92.

[3] An auction sale does not affect the rights of mortgagees, the auction-purchaser purchasing the property *with all its incumbrances*.

the yearly usufruct of the village mortgaged in lieu of interest, and this he was to continue to receive until the mortgagors came forward with a *Yak Musht* payment to be made at the end of the month of *Jeit*. Held, that unless the mortgagee could prove *dispossession* while something was yet due to him from the mortgagor, he could not sue for the mortgage money without waiting for the voluntary *Yak Musht* payment, as stipulated in the deed. *Syud Mohumed Hoossein Khan* v. *Thakoor Sheo Gholam Singh and others*. 9th Sept. 1848. 3 Decis. N. W. P. 331.—Thompson & Cartwright.

23. *Sed aliter* if he were so dispossessed, when he might claim a restoration of the estate, or sue for a cash payment, whichever he might prefer, without waiting for the stipulated payment. *Ibid.*

24. *A* instituted a suit against *B*, *C*, and *D* for the recovery of the sum of 1600 *Fanams*, due on a mortgage bond, which had been executed by *B* in favour of *D*, and transferred by the latter to *A*'s deceased *Karnaven*. It appeared that two cultivators of the said *Karnaven* were securities to *D* for the payment of his claim; that *D* instituted a suit against the said securities, and obtained a decree against them; that they then sued and obtained a decree against *A*, who instituted a suit as above-mentioned against *B*, *C*, and *D*, for recovery of the 1600 *Fanams*, with interest thereon. The Acting District Moonsiff passed a decree in favour of *B* and *C*, nonsuiting *A* with costs, on the ground that the transaction which led to the institution of the suit had been settled between *B* and *A*'s deceased *Karnaven*, the latter having passed a receipt to that effect. This decision was, however, reversed on appeal, on the ground that *A*'s *Karnaven* had no right to pass the receipt referred to, the bond for which it was said to have been given having gone into the possession of another party, and that, moreover, the genuineness of the receipt was doubtful, and there was good reason to believe that *A*'s *Karnaven* would not have executed such a document *alone*. *Shamoo Putter and another* v. *Ekenatha Ellea Kymul Kesha Ooney*. 2d July 1849. S. A. Decis. Mad. 3.—Hooper.

25. Where *A* had re-mortgaged to *B* the same land (with some other portion of land besides) which he had formerly mortgaged to him by a document, which had been pronounced, by a decree, not appealed from, and therefore final, to be invalid, the said *A* having, as declared in the said decree, no legal right to execute such a document on the said land; it was held, that the latter mortgage, executed by him on the same land was invalid also; and inasmuch as to sue again for the same land which had been disallowed by a final decree in a former suit is contrary to Sec. 9. of Reg. II. of 1802, *B*'s claim was dismissed. *Parwatee Boyee Ummal* v. *Maroothamoottoovengara Moothien*. 9th July 1849. S. A. Decis. Mad. 16.—Hooper & Morehead.

26. Where mortgages were executed by the recorded *Zamíndárs* in behalf of the whole proprietary community, previously to the ascertainment and record of individual interests, which took place at the Settlement; it was held, that such a transaction was not so uncommon an occurrence as in itself to raise a *primâ facie* suspicion of fraud. *Mulik Basah* v. *Mt. Dhana Beebee and others*. 5th Aug. 1850. 5 Decis. N. W. P. 220.—Begbie, Deane, & Brown.

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2. *What constitutes a Mortgage.*

27. A lease granted in consideration of an advance of a sum of money was held to be equivalent to a mortgage, and the lessee was declared to be liable for such surplus proceeds of the estate as remained, after he had

realized his principal with interest. *Bengal Appeal Case,* 1827, *cited in Mooddoo Vencataramachetty* v. *Gholam Shahoodeen Mahomed Soodary.* 1849. S. A. Decis. Mad. 45.

28. Where *A* executed to *B* a deed on stamped paper, to the effect that *B* should enjoy certain villages, deducting a sum as interest on a debt due by *A* to *B* at the rate of one per cent., and that *B* should restore the villages to *A*, on *A*'s paying *B* the amount of the debt in the month of *Chittray* in any year; it was held, that such deed, notwithstanding that in the body of it the words "rent" and "mortgage" were both entered, and that it was drawn up in an informal manner, and in terms ambiguous and contradictory, was virtually and in effect a mortgage bond; and that *B* having entered into possession of such lands under the deed, was to all intents and purposes the mortgagee in possession, and not a mere renter, as asserted by *A*, and could not be ousted by *A* without payment of the principal and interest stipulated in the deed. *Mooddoo Vencataramachetty* v. *Ghoolam Shahoodeen Mohammed Soodary and another, and vice versâ.* 23d Aug. 1849. S. A. Decis. Mad. 44.—Hooper.

29. *A* sued to eject *B* from an estate held by him in virtue of a lease. The terms of the lease were, that *B*, the farmer, should pay for the farm a certain sum annually, of which a portion was to be paid into the Government Treasury for the Government demand, and the remainder to be paid to the *Zamíndárs* (in whose place *A* stood), or to be carried to their credit in repayment of a sum lent to them. The *Zamíndárs* were to receive possession on the expiration of three years, on the repayment of the money advanced with the sums due on account of advances made by *B* to cultivators, balances, &c., on a settlement of accounts to be adjusted in presence of the cultivators according to the *Patwárí* papers, or the farmer was to continue in possession on the same terms until such time as the *Zamíndárs* should fulfil their part of the engagement. Held, that the document thus stated to be a lease was of the nature of a mortgage, and must be regarded as such, and that *B* could not be dispossessed until the terms of the deed were fulfilled. *Saunders* v. *Roshun Lall.* 30th June 1845. Quoted in 3 Decis. N. W. P. 352. —Court at large.

30. *A* did not prefer a special appeal from the above decision, but sued anew for possession of the land with *Wásilát,* on the ground that the mortgage-money had been liquidated from the usufruct, and the conditions of the deed fulfilled. Held, that *A* had rightly brought his suit as one of simple mortgage. *Roshun Lall* v. *Saunders.* 19th Sept. 1848. 3 Decis. N. W. P. 352.—Thompson & Cartwright.

31. A deed of lease was executed by the borrower of a sum of money in favour of the lender, the condition of which was, that the lessee should hold possession, paying the *Jama,* and deriving what profits he could from the land: the lease was to be in force for four years, and, on restitution of the principal sum, the deed was to be cancelled. It was a further condition, that the lessee should be entitled to remain in possession until such time as the whole of the advance might be repaid at once. Held, that such a transaction must be held to be in the nature of a mortgage, although denominated a lease, and its present form being given to it with the evident object of evading the mortgage laws.[1] *Baboo*

[1] The Court in this case took occasion explicitly to declare their opinion, that all bargains of this nature are liable to be declared subject to the laws which govern mortgages whenever brought in question before a Court of Judicature. And see the cases of *Queiros* v. *Khudija Sultan Begum and others.* 1 S. D. A. Rep. 199, and *Girdharee Lal* v. *Mt. Kadira.* 6 S. D. A. Rep. 175.

Dul Buhadur Singh and another v. *Baboo Bhugwan Dutt Tewaree and others.* 26th Aug. 1850. 5 Decis. N. W. P. 266.—Begbie, Lushington, & Deane.

3. *Redemption.*

32. In a suit for the redemption of lands conditionally sold, where the period for repayment of the money advanced had expired before the promulgation of Reg. XVII. of 1806; it was held, that the borrower could not afterwards plead that Regulation under Construction No. 672. *Bhowanee Suhaee and others* v. *Noor Nurain.* 29th June 1846. S. D. A. Decis. Beng. 243.—Rattray, Tucker, & Barlow.

33. *A* mortgaged certain property by conditional sale to *B*, and subsequently transferred the same property again by a deed of *unconditional* sale to *C*, who, not being able to get his name recorded as proprietor, brought an action against *A*, who filed confession of judgment and decree in favour of *C*. *B*, previously to this, petitioned, under Reg. XVII. of 1806, to get his sale made absolute. A notice of one year was served, and *A* gave in an acknowledgment that the transaction was correct. Within the year of grace, however, *C*, the unconditional purchaser, who had obtained his decree on his deed of sale, paid the money demanded on the conditional sale into Court; but *B*, the mortgagee, refused to take it, and the usual proceeding under Reg. XVII. of 1806 being held, the case was struck off, rendering the sale in so far conclusive. *B* then brought a suit for possession, but his claim was dismissed; and it was held, that *C*, having fairly purchased the property by an unconditional deed of sale, and having obtained a decree on such deed, *stood in the place of the conditional seller*, and was entitled to redeem the property, which he had in fact done, by the payment into Court of the amount due on the mortgage. *Buddun Ghir and others* v. *Ramjeawun Kirtah and others.* 20th July 1846. 1 Decis. N. W. P. 81.—Thompson, Cartwright, & Begbie.

34. A tender of the money due on a *Bay bil Wafá*, made by one of several mortgagors, or of their representatives, is a legal tender, and entitles him to redeem the property, and save the sale from becoming absolute. *Ibid.*

35. Where a mortgagor stipulated in a separate engagement to pay a certain annual sum to the mortgagee, so long as the property was unredeemed; it was held, that the mortgagor could not, in an action on the mortgage bond for redemption, claim to have any portion of this sum deducted from the principal. *Bhubootee Singh* v. *Bheem Singh.* 19th Jan. 1847. 2 Decis. N. W. P. 8. —Tayler, Thompson, & Cartwright.

36. Where a mortgagor brought his suit for redemption, on the ground that the amount of the mortgage had been repaid by the usufruct, and it appeared that a balance was still due from the estate; it was held, that the Courts could not decree the redemption of the estate on the payment at any time of the mortgage money, but must dismiss the suit. *Bhubootee Singh* v. *Bheem Singh.* 19th Jan. 1847. 2 Decis. N. W. P. 8. —Tayler, Thompson, & Cartwright. *Sadho Singh and others* v. *Chutree Singh.* 26th Feb. 1849. 4 Decis. N. W. P. 28.—Tayler, Thompson, & Cartwright. *Sheo Buksh and others* v. *Ahmud Khan.* 1st March 1849. 4 Decis. N. W. P. 37.—Tayler, Thompson, & Cartwright. *Mathuram* v. *Dhurm Singh.* 30th May 1850. 5 Decis. N. W. P. 104.—Begbie, Deane, & Brown.

37. But where a mortgage was found to be redeemable on payment by the mortgagor of the sum originally advanced by the mortgagees, a decree was given in favour of the mortgagors suing for redemption and possession of the mortgaged pro-

perty after having tendered the whole amount demandable.[1] *Nenul Kishore and another* v. *Hursurroop and others.*[2] 30th May 1850. 5 Decis. N. W. P. 106.—Deane.

38. And it is not necessary for the mortgagors suing to redeem to deposit the mortgage money in Court. *Ibid.*

39 The neglect to make a tender or deposit of the amount due on mortgage, according to the provisions of Sec. 2. of Reg. I. of 1798, is no bar under Construction No. 339 to the institution of a regular suit to demand an adjustment of accounts, and restoration of the mortgaged property, should it be established that the sum borrowed, with interest thereon, has been realized by the mortgagees from the usufruct of the land. *Muhesh Chunder Sheel and another* v. *Thakoordas Sheel and others.* 8th Feb. 1847. S. D. A. Decis. Beng. 48.—Tucker.

40. But if the mortgagors desire to recover possession of the mortgaged property summarily, without instituting a regular suit, then they must have deposited the amount borrowed. *Ibid.*

41. An action for the redemption of a *portion* of property mortgaged jointly, and without specification either of the rights of the mortgagors or of the interest of the mortgagees, will not lie.[3] *Ruttun Koonwur and others* v. *Fuzl Hoossein and another.* 15th June 1847. 2 Decis. N. W. P. 180.—Tayler, Begbie, & Lushington.

42. In a case of mortgage and conditional sale, the mortgagors deposited the amount due within the year of grace; but with a *condition*, that it was not to be paid away until the result of a regular suit by themselves was known. On a suit by the mortgagee, the sale was declared to have become absolute, as the deposit was not, under the circumstance, a legal tender as contemplated by Sec. 7. of Reg. XVII. of 1806. and Sec. 2. of Reg. I. of 1798. *Muthoor Mohun Mitr and another* v. *Bindrabun Chundur Udhikaree.* 21st Aug. 1847. S. D. A. Decis. Beng. 462.—Barlow & Hawkins. (Tucker dissent.)

43. A party denying a mortgage, although depositing in Court the sum required for its redemption, with the expressed intention of suing for its recovery, and so suing immediately, cannot, on the mortgage being established, claim to have the deposit considered as a legal tender; and there was consequently no redemption of the mortgage. *Hurkishore Rae and others* v. *Ojeer Ali and others.* 30th Dec. 1848. 7 S. D. A. Rep. 562.—Barlow, Jackson, & Hawkins.

44. A mortgagor, or conditional vendor, is entitled to have an account

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[1] In this case the mortgagors tendered the whole amount demandable to the mortgagees, who refused to accept it, and the mortgagors sued for the redemption of the mortgaged property and possession thereof. The Lower Courts decreed in favour of the plaintiffs. A special appeal was admitted, to try "whether or not a Court can decree that a mortgage shall be redeemed on payment of a certain sum, or whether, rather, that on the mortgage money being paid or deposited, the mortgagor shall then commence his suit for redemption." The Court, confirming the decisions of the Lower Courts, observed—"The doctrine laid down by this Court, that it is irregular to pass conditional decrees, is not applicable to a case like the present. The rule in question is designed to bear upon cases in which, when a mortgagor sues for redemption, a balance is found to be due to the mortgagee, or, in other words, to cases in which a mortgagor, who sues to redeem, is not, according to the terms of his suit, entitled to redeem."

[2] The Court, in deciding this case, referred to a precedent, dated the 12th Sept. 1844, which has not been reported, but which is mentioned as fully disposing of the point mooted in the certificate of special appeal quoted in the preceding note.

[3] And see the Case of *Sadhoo Lall* v. *Naeema Beebee.* 3 S. D. A. Rep. 139.

from the mortgagee, or conditional vendee, for the period of his possession, before it can be ruled that his equity of redemption is barred. *Lalpaureh* v. *Baboo Hurpurshad Nurain Singh.* 13th April 1848. 7 S. D. A. Rep. 485.—Hawkins.

45. The dispossession of the plaintiff, his father, and grandfather, was held to be no bar to his suit for the redemption of a mortgage of his great uncle's property, as his heir, such property having been mortgaged in the year 1811 by the great uncle's widow.[1] *Ramsurrun Singh* v. *Mt. Soobutchna and another.* 6th June 1848. 3 Decis. N. W. P. 187.—Thompson.

46. A previous deposit of the entire principal of a mortgage debt is only necessary when application for re-entry into possession is made before the period of mortgage shall have expired. *Zeinut Begum* v. *Bheekun Lal and others.* 12th Sept. 1849. S. D. A. Decis. Beng. 392. —Barlow & Colvin. (Dick dissent.)

47. And if the suit for re-entry be brought *after* such period, no deposit is necessary. *Ibid.*

48. If a mortgagee neglect to carry out process of foreclosure under the provisions of Sec. 8. of Reg. XVII. of 1806, a continuing liberty remains to the mortgagor to reclaim his property. *Ibid.*

49. Where the stipulations of a mortgage deed were, that the land should be enjoyed by the mortgagee in lieu of interest, and should be restored to the mortgagor on repayment of the principal lent; and it appeared by the calculation on the evidence adduced that the profits derived by the mortgagees fell short of the annual legal interest on the said principal, and therefore no part of the principal had been liquidated thereby; it was held, that the mortgagor should recover the mortgaged lands on repayment of the principal. The mortgagees having, under the terms of the deed, accepted the usufruct of the mortgaged lands, in lieu of interest, for an indefinite period, were held not to be entitled to any thing more, though the profits were below the legal rate of interest.[2] *Moonyeppa Moodely and another* v. *Cumralli Saib.* 31st Jan. 1850. S. A. Decis. Mad. 11.—Hooper & Morehead.

50. Where a mortgage deed did not contain any clause strictly prohibitory of the mortgagor's right to redeem *within* the period for which the property was mortgaged, but was so loosely worded as to admit of interpretation either way; it was held, that the deed should be construed in the sense most favourable to the mortgagor. *Luljoo* v. *Gungoo and another.* 11th June 1850. 5 Decis. N. W. P. 113.—Begbie, Deane, & Brown.

51. A *Bigahdam* tenure was mortgaged by the representatives of the proprietary community, and, although the names of the headmen only appeared in the deed, the mortgage transaction was entered into by them in behalf and with the consent of all, and the shares of all were duly recorded afterwards, with the assent of the mortgagees, in the administration paper of the Settlement. The plaintiffs, who were undersharers in the tenure, alleged that the mortgage had been satisfied by the usufructuary profits, and sued in the name and behalf of the whole proprietary for redemption of the entire property, admitting that there were others who had not joined them in the suit, from absence and other causes. It was decided by the Lower Court, that the facts of the plaintiffs' possession, and of their participation in the mortgage, were clearly proved from the *Wájib-*

[1] Reg. II. 1803, Sec. 3. Cl. 4.

[2] And see the case of *Behari Lal* v. *Mt. Phekoo and another.* 1 S. D. A. Rep. 119. See also Vol. I. of this work, p. 470, note 1.

ul-Arz, and other documents and evidence, and that they were entitled to redeem their own and the others' shares, as specified in the *Wájib-ul-Arz*. Held, by the Sudder Dewanny Adawlut, that the decision was good *quoad* the plaintiffs individually; but the mortgage bond not having been produced, and the plaintiffs having put forward, as the foundation of their proof, the supplementary detail in the *Wájib-ul-Arz*, which contained a distinct specification of the mortgage shares, without any specific conditions for their release, that the mortgagee was entitled to take his stand on the same document, and to refuse redemption until the individual mortgagor appeared to claim it, the plaintiffs having no claim on the mortgagee beyond the interests which they had themselves recorded. *Mulik Basah* v. *Mt. Dhana Beebee and others.* 5th Aug. 1850. 5 Decis. N. W. P. 220.—Begbie, Deane, & Brown.

52. Where, in a suit for the foreclosure of a mortgage, a decree has been passed in favour of the mortgagee, it is not competent to the Courts to entertain a suit for the redemption of the same property on the strength of an agreement, executed by the mortgagee during the year of grace allowed after his application for foreclosure, by which he bound himself to restore the estate to the original owner on certain conditions. *Buddeeoolzuman* v. *Baneepershad.* 9th Sept. 1850. 5 Decis. N. W. P. 294.—Begbie, Deane, & Brown.

4. *Limitation as to redemption.*

53. If, after the redemption of a mortgage from the usufruct of the land, the mortgagor is content to wait more than twelve years before he advances his claim to possession of the redeemed land, he is at liberty to do so; but he cannot claim profits which have been due to him more than twelve years from the time of the institution of his suit, such being subject to the law of limitation. *Mehur Dass and others* v. *Hajee Mohumed Imam Buksh.* 4th Sept. 1849. 4 Decis. N. W. P. 298.—Thompson, Begbie, & Lushington. *Sultunut Singh and others* v. *Hunnoo Singh and others.* 25th June 1850. 5 Decis. N. W. P. 134.—Begbie, Deane, & Brown.

54. Where the defendant executed a deed acknowledging a debt, and mortgaging a house to the plaintiff, with the right of redeeming it within two years, by payment of the money with interest; and it was also stipulated in the deed that as the defendant had no other house to live in, it was to remain in his possession at a certain rent, and in default of payment the plaintiff was to take possession; it was held, that the clause relative to the rent, merely stipulating that, in the event of failure of payment of such rent, the mortgagee should dislodge him, and either occupy it himself or make it over to another tenant, such agreement should more properly have been executed separately, and had no connexion with the conditions of the mortgage compact to which it was subjoined; and that the period of limitation for a suit for the recovery of the debt was to be reckoned from the expiration of the two years, and not from the date of any failure to pay rent on the part of the mortgagor. *Ubboo* v. *Suktoo.* 13th Aug. 1850. 5 Decis. N. W. P. 239.—Begbie, Deane, & Brown.

5. *Foreclosure.*

54*a*. The year of grace expiring during the *Dusserah* vacation, the deposit on the day on which the Court re-opens was held to be a sufficient payment to prevent foreclosure under Sec. 8. of Reg. XVII. of 1806.[1] *Nilgovind Talookdar, Pe-*

[1] And see the analogous case of *Fusl-oo-Nissa, Petitioner.* 15th July 1841. 1 S. D. A. Sum. Cases, Pt. ii.—D. C. Smyth & Lee Warner. (Reid dissent.)

titioner. 27th April 1840. 2 Sev. Cases, 355.—Reid.

55. The date from which the year of grace granted for the redemption of property conditionally sold is to be counted, is the date of the notice issued, and not the date of the service of the notice.[1] *Kunhya Lal Thakoor* v. *Ras Munee Dossea*. 15th July 1846. 7 S. D. A. Rep. 264.—Reid, Dick, & Jackson.

56. The year of grace for the redemption of a mortgage runs from the date of issue, and not of service of the notice, and must be reckoned according to such calculation, which no local custom can supersede. *Ruttun Monee and others* v. *Joogul Kishore Raee and others*. 19th June 1847. 7 S. D. A. Rep. 346.—Tucker, Barlow, & Hawkins.[2]

57. Where mortgagors on a *Bay bil Wafá* had deposited the mortgage money with the Judge within the year of grace, but with an intimation that they were about to institute a suit against the mortgagees, and a request that the amount deposited might be retained in deposit till such suit should be disposed of, and the Judge received it, but returned it one day after the expiration of the year of grace, remarking that such conditional deposit was not allowable; it was held, that such deposit was not a tender of payment as contemplated by Sec. 7. of Reg. XVII. of 1806, and Sec. 2. of Reg. I. of 1798; and the mortgage money not having been repaid within the year of grace, the sale was declared absolute. *Muthoor Mohun Mitr and another* v. *Bindrabun Chundur Udhikaree*. 21st Aug. 1847. S. D. A. Decis. Beng. 462.—Barlow & Hawkins. (Tucker dissent.)

58. It is incumbent on a plaintiff suing for possession of an estate under a *Bay bil Wafá*, which had suffered foreclosure, to prove that the legal formalities have been observed. *Bijnath Pal* v. *Rajah Muhtab Chundur and another*. 30th Aug. 1847. S. D. A. Decis. Beng. 485.—Jackson.

59. And this is independent of any plea of the opposite party, and is necessary even if the case be tried *ex parte*. *Ibid.*

59*a*. A mortgagor, by deed, authorised his widow to adopt a son. After his death the widow exercised the power, and adopted a boy, a minor, who became, by the Hindú law, the legal representative of the deceased. The order of foreclosure was served on the widow only. Held, that as the widow had a life interest, and was also guardian of the minor, such service was sufficient. *Ras Muni Dibbiah* v. *Pran Kishen Das*. 27th June 1848. 4 Moore Ind. App. 392.

60. In a claim on the part of the heirs of a mortgagor for adjustment of accounts with the mortgagee, and redemption of the mortgage, it appearing that the mortgagee had issued summary process of foreclosure, but did not follow this up by the institution of a regular suit; it was held, that, in order to succeed, the heirs must prove that the whole sum lent was repaid, with interest, to the mortgagee from the usufruct of the estate, before the close of the year allowed by law as equity of redemption. *Purtab Nurain and another* v. *Sheo Suhaee Singh and another*. 24th July 1848. S. D. A. Decis. Beng. 711.—Rattray, Dick, & Jackson.

61. A mere petition by a mortgagor, stating inability to pay the amount due, and setting forth delivery of possession, as on foreclosure, to the mortgagee, cannot, unless delivery of possession be proved in the Civil Court, bar an action by another party claiming under absolute sale from the mortgagor. *Sheikh*

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[1] See *infra*, Pl. 63, 64, and notes, Tit. Usury, Pl. 2, note.

[2] And see the case of *Ramgopaul Surmah Tarafdar* v. *Rumzaun Beebee*. 6 S. D. A. Rep. 166.

Hussoo and others v. *Uttur Bibi and others*. 26th July 1849. S. D. A. Decis. Beng. 311.—Barlow & Colvin.

6. *Notice of Foreclosure.*

62. The production of the original deed of mortgage prior to the issue of notice of foreclosure under Sec. 8. of Reg. XVII. of 1806, is not necessary. *Baboo Gopal Lal Thakoor, Petitioner*. 8th Sept. 1840. 1 S. D. A. Sum. Cases, Pt. ii. 47.—Reid.

63. Under Construction No. 630, it is not necessary that a copy of the deed of mortgage should be served on the mortgagor before putting in force the provisions of Sec. 8. of Reg. XVII. of 1806. *Gooroopershad Gohoo and others* v. *Greeschunder Bukshee and others*. 25th Jan. 1847. S. D. A. Decis. Beng. 24.—Tucker.

64. Notice of foreclosure of a mortgage runs from the date of the notice issued, and not from the date of service.[1] *Kunhya Lal Thakoor* v. *Ras Munee Dossea*. 15th July 1846. 7 S. D. A. Rep. 264.—Reid, Dick, & Jackson.[2] *Muthoor Mohun Mitr and another* v. *Bindrabun Chundur Udhikaree*. 21st Aug. 1847. S. D. A. Decis. Beng. 462.—Barlow & Hawkins.

65. And this even when the local custom of the country is to the contrary. *Rutton Monee and others* v. *Joogul Kishore Raee and others*. 19th June 1847. 7 S. D. A. Rep. 346.—Tucker.

66. A notice of foreclosure must be issued from the *Zillah* in which the mortgaged estate is situated. *Bijnath Pal* v. *Rajah Muhtab Chundur and another*. 30th Aug. 1847. S. D. A. Decis. Beng. 485. —Jackson.

67. In a suit between a purchaser and a prior mortgagee, it was held, that it was not necessary for the latter to issue his notice of foreclosure on the former, though *in possession* of the land, as Sec. 8. of Reg. XVII. of 1806 restricted its service on the "mortgagor or his legal representative." *Jyeshunker Chund* v. *Zummeeroodeen and others*. 1st Sept. 1847. 7. S. D. A. Rep. 390.—Dick, Jackson, & Hawkins.

68. One of two proprietors having conditionally sold a joint estate, while the other became a subscribing witness to the deed; it was held, that notice of foreclosure was legally served on him who had conveyed the estate. *Ram Gopal Sen and others* v. *Rajkishore Bul and another*. 15th Feb. 1849. S. D. A. Decis. Beng. 36. —Dick & Colvin. (Barlow dissent.)

7. *Transfer.*

69. The transfer by a mortgagor of his rights and interests in mortgaged lands, though in violation of an express compact, was held to be valid; such transfer not interfering with the lien of the mortgagee. *Ubhychurn Sheikhdar and others* v. *Joogul Kishore Raee and others*. 8th April 1848. S. D. A. Decis. Beng. 305. — Tucker, Barlow, & Hawkins.

8. *Priority.*

70. In a suit where the plaintiffs held a mortgage bond on certain property, dated 10th Feb. 1835, together with possession, and the defendant held a prior deed; it was held by the Sudder Dewanny Adawlut, that the latter, or defendant's deed, being registered, was

[1] See the Case of *Hussein Ali Khan and others* v. *Mt. Phool Bas Koor*. 4 S. D. A. Rep. 5. But that case was decided in favour of the mortgagor, because the *actual terms* of the notice were, that it was to run from the date of *the receipt* of the notice. And see the Circular Order of the 9th April 1817, par. 2, 3. And *supra*, Pl. 56, note.

[2] See *infra*, Tit. Usury, Pl. 2, note, for the final result in this case on appeal to the Judicial Committee of the Privy Council.

entitled to take precedence.[1] *Rambuggut Bin Ramjeewun and another* v. *Sudanundrao Juggurnath.* 25th Nov. 1841. Bellasis, 9.—Bell, Greenhill, & Giberne.

71. Held, that a mortgage bond, supported by an award of arbitration duly registered, is entitled to have preference over a similar deed of later date, supported by possession. *Govindrow Keshow* v. *Rowjee Bappoo Nagal.* 23d March 1847. Bellasis, 70.—Bell, Simson, & Le Geyt.

72. In a suit between separate mortgagees for the surplus proceeds of an auction sale for arrears of revenue of a *Zámíndári* mortgaged under conditional sale, the plaintiff claimed, under a mortgage bond duly registered, and the defendant under one of a prior date unregistered, but on which he had sued and had obtained a decree for possession, and was in possession at the time of sale. Judgment was given for the plaintiff, the registered mortgagee, under Cl. 2. of Sec. 6. of Reg. XXXVI. of 1793, as no mutation of proprietors had taken place after possession, and the property was sold as belonging to the mortgagor. *Brijnath Raee* v. *Chowdhree Inaitoola.* 7th Sept. 1847. S. D. A. Decis. Beng. 525.—Dick.

73. *A* executed a deed of sale to *B*, and *B* paid a portion of the purchase-money. *A*, afterwards mortgaged the property, comprised in the deed of sale, to *C*. Held, that subsequent completion of the sale could not render the deed of sale valid against *C*'s claim as mortgagee, if that deed were not valid before the estate was pledged to *C*.[2] *Gowal Doss* v. *Sooruj Pershaud.* 4th Oct. 1847. 2 Decis. N. W. P. 363.—Tayler.

74. The plaintiff claimed a share in certain lands under a deed of mortgage, *not* registered, dated May 1844. The defendant did not deny the execution of the unregistered deed, but he claimed to retain possession under a registered deed of mortgage, dated June 1847, and a registered deed of sale dated Aug. 1847. Held, that the deed of sale does not deprive the *registered* mortgage of its power to invalidate the previous *unregistered* mortgage, although the two first-named deeds may have been executed in favour of the same parties. *Jynteepershad* v. *Oomeid Singh.* 16th May 1849. 4 Decis. N. W. P. 122.—Thompson, Begbie, & Lushington.

75. A party claiming mortgaged property on the ground of a prior purchase, must make an unconditional deposit of the sum due to the mortgagee before he can obtain possession. *Sheikh Hussoo and others* v. *Uttur Bibi and others.* 26th July 1849. S. D. A. Decis. Beng. 311.—Barlow & Colvin.

76. A mortgage is not invalidated by the circumstance of the mortgaged property having been leased previously to such mortgage, the previous lease being only a burthen on the property subsequently mortgaged. *Dataram Singh and another* v. *Odit Singh.* 9th Aug. 1849. S. D. A. Decis. Beng. 341.—Dick, Barlow, & Colvin.

9. *Liability of Mortgagor.*

77. Where it was satisfactorily established that a mortgagor did not put the mortgagee in possession of the whole number of villages composing the *Talook* mortgaged, and the mortgagee, during the continuance of the mortgage, never sued for possession of the villages withheld by the mort-

[1] This Case illustrates that the Regulation law takes precedence of the *Shastras*: The latter requires possession to legalize a mortgage; the former, only registry of the deed. See *supra*, Pl. 1, 2.

[2] *C* in this case pleaded in the Lower Court that the sale deed was fabricated; and the Judge, not having noticed his plea, the suit was remanded for re-trial, to determine whether the incomplete sale, part of the purchase money only having been paid, did or did not bar *A* from pledging the same to *C* as security for the payment of his loan.

gagor, nor did he assert that any opposition had been made by the mortgagor to his possession of such villages; it was held, that the mortgagee could not, after the expiration of the mortgage, sue for damages sustained by the withholding of such villages during the term of the mortgage. *Bunseedhur* v. *Sheodutt Singh*. 26th March 1849. 4 Decis. N. W. P. 60.—Tayler, Thompson, & Cartwright.

78. The purchaser at auction of an estate, which had been mortgaged previously to the sale of the estate, cannot be personally responsible for the amount of the debt; but the representative of the mortgagor (*i. e.* the auction purchaser) may, equally with the mortgagor himself, render himself liable to be sued for the mortgage money, if he do any act by which the mortgagee is disturbed in the enjoyment of his just rights. *Soudagur Mull* v. *Syed Musseeta*. 18th Feb. 1850. 5 Decis. N. W. P. 55.—Tayler, Begbie, & Lushington.

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10. *Liability of Mortgagee.*

79. *A* mortgaged a certain *Talook* to *B* for the term of ten years, at the expiration of which time the estate was to revert to *A*, free from any further demand. The mortgage expired in 1245 *Faslí*. Meanwhile the *Talook* fell into arrears, and was let in farm for six years. *A* sued *C* and *D* the sons and heirs of *B*, *E* and *F* partners of *B*, and *G* the purchaser of *B*'s right and interest as mortgagee, for the loss he had sustained during the years 1246 to 1249 *Faslí*, in consequence of the estate having been let in farm. Held, that *A* had a right to look to *B* to replace him in possession of the estate at the expiration of the mortgage, and that *B* was the legal obligor to the plaintiff; and as he had bound himself originally by the contract, and no legal transfer had been made to any other party, any subsequent association of other parties in the transaction, except by legal document, and with the consent of the plaintiff, annulling the first contract, could neither exempt *B* from his obligations, nor make the other parties responsible; and a decree was accordingly given against *C* and *D*. *Sheodutt Singh* v. *Salikram and others*. 28th May 1845. Quoted in 4 Decis. N. W. P. 60.

80. Where usufructuary mortgagees sublet the mortgaged property to third parties of their own choosing, and agreed to receive a certain stipulated annual payment; it was held, in a suit for recovery of the mortgage money, that such agreement could not be held to bar their responsibility for the gross receipts deriveable from the estate, and that they were bound to produce in Court an account of the gross receipts of the mortgaged property for the time they held it, verified on oath or solemn affirmation. *Sheikh Mahomed Taha* v. *Sahib Allee and another*. 31st Aug. 1846. 1 Decis. N. W. P. 131.—Thompson, Cartwright, & Begbie.

81. Where a mortgagee bound himself to pay the surplus income derived from the mortgaged property, after deducting the Government demand, the charges of collection, and interest due on the mortgage amount, to the mortgagor, without imputing delay to the *Ryots*, or pleading any obstacle in the collection of the *Gueny* from them; and the *Utavalí* was, at the time of the mortgage, fixed at a certain sum; it was held, that he was justly and legally responsible to the mortgagor for such annual surplus, calculating the *Utavalí* at that rate, whether he actually collected that amount or not. *Sunna Nagappah* v. *Venkappah Kenny*. 12th Dec. 1850. S. A. Decis. Mad. 113.—Hooper & Morehead.

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11. *Accounts.*

82. In a case involving merely the settlement of accounts between a mortgagor and mortgagee, the latter, in the Lower Court, confined his objections to the adjustment proposed by the Court to four items then mentioned by him, not relating to the mortgage transaction, three of which were conceded to him by the mortgagor. Held, by the Sudder Dewanny Adawlut, on appeal, that inasmuch as the mortgagee was accredited with sums that had nothing to do with the mortgage debt in dispute, solely on the ground of the mortgagor's having *consented* to admitof such a proceeding, so it must follow that the item, to which the mortgagor refused to accord his consent, could not be entered into by the Court, it being beside the matter at issue. *Prem Sookh* v. *Hurpershad Singh.* 28th Nov. 1846. 1 Decis. N. W. P. 226.—Thompson, Cartwright, & Begbie.

83. Held, that a suit by a mortgagor, or his *locum tenens*, against a mortgagee in possession, should be brought for adjustment of accounts and repossession, if the mortgage debt be satisfied, and not for mesne profits. *Sheikh Usudoola* v. *Muhur-o-nissa Begum.* 19th April 1848. S. D. A. Decis. Beng. 344.—Dick, Hawkins, & Currie.

84. Under Sec. 11. of Reg. XV. of 1793, a mortgagor may call for accounts from the mortgagee in possession at any time before the mortgage is finally foreclosed.[1] *Zeinut Begum* v. *Bheekun Lal and others.* 12th Sept. 1849. S. D. A. Decis. Beng. 392.—Barlow & Colvin. (Dick dissent.)

85. Where mortgage accounts are filed by both parties, and the Judge doubts both, he is at liberty to fix an equitable sum according to his best judgment, as the amount of annual produce. *Shib Lall and others* v. *Hafiz Mahmood Khan and others.* 18th Oct. 1849. 4 Decis. N. W. P. 317.—Lushington.

86. And where a Principal Sudder Ameen had, under such circumstances, calculated the sum by reference to the assessment made by the Collector on the lands during a period of temporary resumption (the lands being rent-free), his calculation and decision thereon were upheld by the Sudder Dewanny Adawlut. *Ibid.*

87. In a suit for the redemption of a mortgage on the ground that the mortgage debt had been satisfied by the usufruct of the mortgaged property, it is incumbent on the Court to require the mortgagees to file accounts of the nature definedin Sec. 11. of Reg. XV. of 1793 (the corresponding enactment to Sec. 10. of Reg. XXXIV. of 1803), and not to be content with a rough abstract of receipts during the possession of the mortgagees. *Soobdan Doobe and another* v. *Buksh Ali.* 19th Aug. 1850. 5 Decis. N. W. P. 244.—Begbie, Deane, & Brown.

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12. *Practice.*

88. The mis-statement by a plaintiff, of the sum for which his estate was mortgaged, in a suit for restoration of possession is a venial error, and is not a sufficient ground for a a nonsuit. *Ramnuvaz Doobee and another* v. *Sheorutan Doobee.* 20th Aug. 1846. 1 Decis. N. W. P. 124. —Begbie.

89. Before a decree can be given for a money payment, due on an usufructuary mortgage, the mortgagee is bound to prove that he had been either wrongfully or prematurely ousted from possession of the mortgaged property, or that there had been some failure in the engagement on the part of the mortgagor. *Sheikh Mahomed Taha* v. *Sahib Allee and another.* 31st Aug. 1846. 1 Decis. N. W. P. 131.—Thompson, Cartwright, & Begbie.

90. Where in a suit in the Lower Court, merely involving the settle-

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[1] And see *supra*, Pl. 44.

ment of accounts between a mortgagor and mortgagee, *Wásilát* and interest were awarded to the mortgagor, and the mortgagee, on appeal, alleged, that, under the terms of the mortgage bond, neither were recoverable; it was held, that the mortgagee, having omitted to make any objection to the terms of the mortgage bond in the Court below, where, moreover, he had, through his *Vakíl*, only expressed dissatisfaction as to certain items in the account, could not make such objections in appeal. *Prem Sookh* v. *Hurpershad Singh*. 28th Nov. 1846. 1 Decis. N. W. P. 226.—Thompson, Cartwright, & Begbie.

90 *a*. Held, that the summary proceedings of the Lower Courts on the application of a mortgagee to foreclose a mortgage on the expiration of the stipulated period for redemption, which is preliminary to the institution of a regular suit for possession of the mortgaged property left unredeemed by the mortgagor, should not declare the sale *to have become absolute* contrary to Sec. 8. of Reg. XVII. of 1806, and the Circular Order of the 17th Jan. 1834. *Sheopurshun Singh, Petitioner*. 28th Aug. 1848. 2 Sev. Cases, 401.—Hawkins.

MORTGAGEE IN POSSESSION.—See MESNE PROFITS, *passim*; MORTGAGE, 27 *et seq.* 72. 74. 82 *et seq.*

MOUJJUL.—See HUSBAND AND WIFE, 5.

MOUROOSÍ.—See MAURÚSÍ.

MOWUJJUL.—See HUSBAND AND WIFE, 5.

MUHANT.—See RELIGIOUS ENDOWMENT, 7. 13 *et seq.*

MUKADDAM.—See LIMITATION, 120.

MUKADDAMÍ.—See LIMITATION, 120; PRACTICE, 109.

MUKARRARÍ.—See LAND TENURES, 22 *et seq.*; MESNE PROFITS, 3, 4; SALE, 32. 102.

MUKARRARÍ DÁR.

1. *Mukarraridárs*, in possession prior to the decennial Settlement, cannot be summarily ousted by an auction purchaser. *Ramsoonder Pal* v. *Chundrabullee Dibbea and others*. 31st July 1847. S. D. A. Decis. Beng. 376.—Tucker, Barlow, & Hawkins.

2. Held, that the holder of a *Mukarrarí* tenure could not, by a transfer to a third party, without the sanction of the *Zamíndár*, avoid his direct personal responsibility to the *Zamíndár*. *Badam Bibi* v. *Kishen Kishore Raee and others*. 31st Jan. 1850. S. D. A. Decis. Beng. 11.—Barlow, Colvin, & Dunbar.

MUKHTÁR.—See AGENT AND PRINCIPAL, *passim*; MANAGER, 6.

MURDER.—See CRIMINAL LAW, 49 *et seq.*; 160 *et seq.*

MUSTÁJIR.—See PRACTICE, 123.

MUTAWALLÍ.—See LIMITATION, 51.

MUWAJJAL.—See HUSBAND AND WIFE, 5.

NÁNKÁR.—See LAND TENURES, 24.

NATIVE WOMEN.—See EVIDENCE, 41.

NAZIR.—See NOTICE, 4.

NEW TRIAL.

1. A bill of sale and assignment of goods, described as being in certain warehouses belonging to *A*, was given by him for the loan of a sum expressed to have been paid on the day of the date thereof. Upon an action of trover brought against the assignee of *A*, who had seized the goods, it appeared in evidence that a portion only of the goods was in the warehouse specified at the date of the sale, and that no part of the loan was paid on that day, the same being discharged by instalments a few days afterwards: whereupon the Judges of the Supreme Court held, that there had been no valid transfer, and, consequently, no conversion, and gave an interlocutory judgment and verdict in accordance with such view. Held, by the Judicial Committee, on appeal from such judgment and verdict, and from an order refusing a new trial, that the judgment and verdict were not justified by the evidence, and must be reversed, and a new trial granted. *Muttyloll Seal* v. *O'Dowda.* 29th Feb. 1848. 6 Moore, 324.

2. In a motion for a new trial affidavits cannot be received to explain the evidence given by witnesses at the trial. *Dallas* v. *Roghoobur Dyal and others.* 26th Nov. 1849. 1 Taylor & Bell, 111.

3. When the evidence shews a larger payment than the sum pleaded the plea cannot be amended by inserting the larger amount;[1] but a new trial will be granted on terms. *Bhobosoonderee Dabee* v. *Thakoordass Mookopadhiah.* 16th Nov. 1848. Taylor, 402.

NON-REGULATION DISTRICTS.—See APPEAL, 67.

NONSUIT.—See PRACTICE, 214 *et seq.*

NOTES.

I. BOUGHT AND SOLD NOTES, 1.
II. PROMISSORY NOTES. — See BILLS AND NOTES, *passim.*

I. BOUGHT AND SOLD NOTES.

1. *C.* & *Co.* and *H* & *Co.* were merchants at Calcutta. *H* & *Co.* sold to *C* & *Co.* a large quantity of indigo through the medium of a broker, who drew up a sold note addressed to *H* & *Co.*, and submitted it to *H* for his approval, when *H* having objected to a particular word remaining, the broker took the sold note to *C*, and informed him of *H*'s objection. *C* struck his pen through the word objected to by *H*, placing his initials over that erasure, and returned it to the broker, who thereupon delivered it, so altered, to *H* & *Co.* The broker delivered to *C* & *Co.*, on the following day, a bought note, which differed in certain material terms from the sold note. In an action brought by *H*

[1] 2 Sm. and Ry. 48.

& *Co.* against *C* & *Co.* for non-performance of the contract contained in the sold note, the Supreme Court at Calcutta was of opinion that the sold note alone formed the contract, and found for the plaintiffs. Upon appeal, it was held, by the Judicial Committee of the Privy Council, reversing such finding of the Supreme Court, that the transaction was one of bought and sold notes, and that the circumstances attending *C*'s alteration of the sold note and affixing his initials were not sufficient to make that note, alone, a binding contract; and that there being a material variation in the terms of the bought note with the sold note, they together did not form a binding contract. *Cowie and others* v. *Remfrey and others.* 11th Feb. 1846. 5 Moore, 232. 3 Moore Ind. App. 448.

NOTICE.

I. Of Pottas, 1.
II. For Appearance, 2.
III. Of Change of Parties, 5.
IV. In Appeals, 7.
V. Notice of Action. — See Action, 84 *et seq.*
VI. Of Enhancement of Rent. —See Assessment, 45 *et seq.*
VII. Of Demand of Rent.—See Assessment, 60.
VIII. Of Foreclosure. — See Mortgage, 62 *et seq.*
IX. Of Appeal to the Judicial Committee of the Privy Council. — See Appeal, 4, 5.
X. Of Sale.—See Sale, 58 *et seq.*
XI. Of Postponement of Sale. —See Sale, 93 *et seq.*
XII. Notice of Execution of Decree.—See Practice, 324*a*.
XIII. Salt Notice.—See Salt, 5, 6.

I. Of Pottas.

1. The notice prescribed by Sec. 5. of Reg. IV. of 1794 refers to the tender of *Ryotí*, and not of *Talookdárí Pottas. Nuboo Comar Chowdhree and others* v. *Hur Chunder Nath and others.* 17th July 1847. 7 S. D. A. Rep. 361.—Tucker, Barlow, & Hawkins.

II. For Appearance.

2. The issue of notice to the heirs of a deceased defendant or respondent by the opposite party to the suit is sufficient, and proof of their heirship is not required of him. *Kummul Kishore Goh, Petitioner.* 2d June 1845. 1 S. D. A. Sum. Cases, Pt. ii. 69.—Reid.

3. The Rajah of Burdwan having failed to attend to a notice of a Zillah Court, requiring him to appear, if he wished so to do, in order to rebut certain claims set up in opposition to an attachment and sale of property in execution of a decree held by him, on the ground that the usual mode of service by letter had not been followed; the Sudder Dewanny Adawlut held, that he was bound to attend to such notice, stating at the same time his objection to the mode of service. *Maharaja Mehtab Chund, Raja of Burdwan, Petitioner.* 29th Dec. 1840. 1 S. D. A. Sum. Cases, Pt. i. 51.—Reid.

4. Where the record shewed that notice for *A*'s appearance was issued through the *Názir* of the Principal Sudder Ameen's Court, by whom a return was made, to the effect that *A* duly signed and acknowledged receipt of process in the presence of two witnesses, who also subscribed the notice, and one witness deposed to the due service of the notice, but the other denied all knowledge of it, and *A* pleaded that he could read and write, and that the mark on the notice was not his; the Court observed, that such notice, so served, was not sufficient under the law.

Mt. Taramonee v. *Lal Mahomed Mundle.* 26th April 1845. S. D. A. Decis. Beng. 135.—Tucker, Reid, & Barlow.

III. OF CHANGE OF PARTIES.

5. It is not necessary to issue a fresh notice to a new Receiver of the Supreme Court succeeding to the office on the death of the last incumbent, in a case to which such Receiver is a party, the Receiver's office still continuing, and it being the duty of the new officer to attend and carry on cases in which the Receiver is officially concerned. *Kalee Shunker Buxee and others, Petitioners.* 18th March 1845. 1 S. D. A. Sum. Cases, Pt. ii. 66.—Reid.

6. When the Receiver of the Supreme Court represents a plaintiff in a case, notice should be issued to the plaintiff on a change of officers. *Macpherson* v. *Muha Rajah Kishen Kishwur.* 28th Dec. 1848. S. D. A. Decis. 890.—Jackson.

IV. IN APPEALS.

7. It is irregular to nonsuit a plaintiff, respondent in appeal, without serving notice upon him. *Surwunt Lal and others* v. *Ramkishen Sahoo and others.* 29th April 1848. S. D. A. Decis. Beng. 388.—Hawkins.

8. Where, on the death of a respondent, the name of his son is substituted on the record, notice should be served upon such son individually before the case can be proceeded with. *Joogul Kishore and others* v. *Dagun Ram and others.* 31st July 1848. S. D. A. Decis. Beng. 730. —Tucker.

9. Where the respondents had appeared by *Vakil* to have their case conducted on their behalf to its final determination; it was held, that a neglect by the appellants to issue the notice to them, did not render the appellants liable to the penalty of default under Act XXIX. of 1841. *Mohan Ray and others, Petitioners.* 18th Sept. 1850. 3 Sev. Cases, 23. —Colvin, Jackson, & Barlow.

NOTARY.

1. The Supreme Court has no power to appoint notaries public. *Ex parte Biddle.*[1] 28th Nov. 1848. Taylor, 423. *Ex parte Carruthers.* 28th Nov. 1848. Taylor, 425.

2. A notary public is not an officer of Court, within the meaning of the 24th Sec. of the Charter of the Supreme Court at Calcutta, but is amenable to the jurisdiction of the Court of Faculties in England. *Ibid.*

NUISANCE.—See ABATEMENT, 1.

OATH.—See PRACTICE, 446 *et seq.*

OBLIGOR AND OBLIGEE.—See BOND, *passim.*

OBSEQUIES.—See HINDÚ WIDOW, 11 *et seq.*

OFFICER OF COURT.[2]

1. Appeal from an Order of the Supreme Court at Calcutta, suspending from office the Master and Accountant-General and Examiner in

[1] It was mentioned in the argument in this case that the Supreme Court at Madras has been in the habit of admitting notaries, although the Madras Charter does not contain greater powers than those embodied in the Charter of the Supreme Court at Calcutta. Peel, C. J., observed on this point—"We are disposed to treat its decisions (*i. e.* those of the Supreme Court at Madras) with respect, but we must decide on our own view, and the construction of our own Charter."

[2] The *placita* under this Title might be more appropriately put under other headings; but the report of the case reached me too late for insertion in any other place.

Equity of that Court, upon special application, allowed. *In the matter of Grant.* 19th Feb. 1850. 7 Moore, 141.

2. The Supreme Court at Calcutta has power, by the Charter of Justice of 1774 (14th Geo. III.), to remove, or suspend, officers of that Court, on account of misconduct, and this power of removal is not limited to acts done by such officer in his judicial capacity, but includes transactions distinct from those of his office. *Ibid.*

3. An officer of the Court, being a shareholder and director of the Union Bank at Calcutta, was a party to deceptive statements, contained in the half-yearly reports of the concern, as to the state of the affairs of the Bank, and also availed himself of his character of director, to obtain credit to a considerable amount upon his personal security only, which, by the condition of the deed of co-partnership of the Bank, amounted to a breach of trust. No charge or imputation with respect to his judicial functions was brought against him. Held (affirming the order of the Supreme Court suspending such officer from office), that there were sufficient grounds for calling upon the Court to protect the administration of justice, by suspending such officer for so misconducting himself. *Ibid.*

OFFICES.—See Inheritance, 25, 25*a*.

OFFICIAL ASSIGNEE.—See Insolvent, 5*a*.

OFFICIAL PERSONAGE.

1. If a party *bonâ fide*, and not absurdly, believes that he is acting in pursuance of a Statute, he is entitled to the special protection which the Legislature intended for him, although he has done an illegal act. *Spooner* v. *Juddow.* 14th Feb. 1850. 6 Moore, 257.

ONUS PROBANDI.—See Evidence, 128 *et seq.*

PÁNBATTA.—See Action, 79; Appeal, 129; Dues and Duties, 5.

PAN HÁYIT. — See Arbitration, 7. 17. 19. 35; Jurisdiction, 47.

PARDON.—See Criminal Law, 209.

PAROLE. —See Evidence, 116 *et seq.*

PARTIES.

I. In the Supreme Courts.—See Practice, 10, 11.

II. In the Courts of the Honourable Company.—See Appeal, 69 *et seq.*; Notice, 5, 6. 8; Practice, 84 *et seq.*

PARTITION.

I. Generally, 1.

II. Private Partition, 6.

III. Evidence of.—See Evidence, 37. 135. 136.

IV. Butwárá.—See Butwárá, 1, *et seq.*

I. Generally.

1. A mortgagee cannot sue for a division of a joint undivided estate, the proprietors alone being the persons contemplated by Reg. XIX. of 1814, who are competent to make such an application. *Nuwab Mahomud Wally Daud Khan* v. *Ma-*

homud Ebadoollah Khan. 8th Feb. 1847. 2 Decis. N. W. P. 32.—Tayler, Thompson, & Cartwright.

2. Semble, a division as to food and business, though not accompanied with division of the landed property, is sufficient in the eye of the law to admit a female as heir of her husband for her lifetime. *Bukto Chowdhrain and another* v. *Kerut Singh.* 11th March 1848. S. D. A. Decis. Beng. 183.—Tucker.

3. A *Butwárá* confirmed by a competent authority cannot be set aside by the Civil Court. *Baboo Prannath Chowdhree and another* v. *Unoodapershad Raee.* 15th May 1848. S. D. A. Decis. Beng. 451.—Jackson.

4. A *Zamíndár* dying and leaving by will two-thirds of his landed estate to the children of his first wife, and one-third to the son of a second wife, no partition of the estate, either real or personal, having been effected during his lifetime; the will was declared invalid, and the Sudder Adawlut, amending the decree of the Lower Court, which had allotted one moiety of the estate to the family of the first wife, and the other moiety to the son of the second wife, decided that the estate, both real and personal, should be divided amongst the heirs of the deceased *Zamíndár*, according to the Hindú law of inheritance.[1] *Mootoovengadachellasamy Manigar* v. *Toombayasamy Maniagar.* 23d July 1849. S. A. Decis. Mad. 27.—Thompson & Morehead.

5. In a suit for partition of moveable property, jewels, cattle, household utensils, &c. where it was found impossible to come to any decision as to the amount or value owing to the different estimates taken by the plaintiff's witnesses, it was proposed to the parties by the Court, that one of the defendants, the head of the family, should give in a schedule of all goods and chattels, and affirm its correctness by solemn affirmation before the Court; which was accordingly done by mutual consent. *Appasawmy Vandiar and others* v. *Streenewasa Charry.* 25th Oct. 1849. S. A. Decis. Mad. 80.—Morehead.

II. Private Partition.

6. There is no legal objection to a private division amongst the sharers of a joint estate, and such division cannot be prevented without an infringement of the rights of private property. *Kaleechunder Surma*

[1] The division by the decree of the Lower Court was made according to the *Patní Bhága*, or division according to wives, in contradistinction to *Putra Bhága*, or division according to sons (1 Str. H. L. 205), the parties being *Sudras*, amongst which Cast the custom in some cases prevails. The general rule is, that partition by allotment to wives, instead of to their sons, only takes place when the number of sons by each wife is equal. 2 Coleb. Dig. 572. 575. The division by *Patní Bhága* should be proved to obtain amongst the parties by custom, even if such parties be *Sudras*; and, as remarked by Mr. Ellis, "no Judge should allow of such division if he can avoid it." 2 Str. H. L. 351—353. "It is true," says the same high authority, in remarking upon another case, "that *Patní Bhága* (division by wives) exists, and is allowable among *Sudras*; but the authority quoted (*Saraswáti Vilása*) does not intend that it is 'essential' to them. If it had been proved that *Patní Bhága* has customarily existed in the same *Kula* (tribe) to which the parties concerned in the suit belong, it should be admitted; if not, the general law must, in all cases, be preserved." 2 Str. H. L. 425. Neither the *Mitákshará* nor the *Madhavíya* recognise the *Patní Bhága* at all.—*Ib.* The *Pandits* of the Sudder Adawlut observed, in their answer to the inquiries of the Court in this case, that the division by wives is opposed to Hindú law; and moreover, that it was not a usage acted upon in that part of India. They further remarked, "that the Hindú Law only authorises an equal division of paternal property among sons," and that there is no difference in the "said division observed under the Hindú law consequent upon the difference of Casts." There seems to be no doubt that the division by *Patní Bhága* should never be resorted to, unless it be proved by evidence to be an established custom.

Chowdry v. *Eeshurchunder Chowdry and others.* 21st June 1845. S. D. A. Decis. Beng. 199.—Gordon.

7. But by such a division the sharers are not relieved from joint responsibility so far as the Government revenue is concerned. *Ibid.*

8. And by such a division the sharers are barred from effecting a separation of their shares, under Reg. XIX. of 1814, because, by that law, the Revenue authorities are required to allot land in the proportion of the revenue, or *Jama*, of the share, and this would be impossible on the supposition that the proprietors had already disposed of the land, in certain allotments, by private contract. *Ibid.*

9. The plaintiffs sued for the separation of their share in an estate agreeably to the provisions of Reg. XIX. of 1814. Held, that until a division shall have been made by the Revenue authorities, according to the provisions of Reg. XIX. of 1814, the estate must be considered an undivided *Mahâll*, and, as such, open to a division. *Bukshee Ram and another* v. *Sheobuksh and others.* 11th Jan. 1848. 3 Decis. N. W. P. 16.—Tayler, Cartwright, & Begbie.

10. And a *private* division amongst the coparceners, though the Revenue authorities would be unwilling to interfere with it, so long as they paid their revenue regularly, cannot be held to bar a division under the provisions of Reg. XIX. of 1814. *Ibid.*

11. And, in the event of a balance of revenue accruing, the *entire* estate is liable for the same, without reference to the particular portion of the estate on which it might accrue under such *private* distribution. *Ibid.*[1]

[1] The decision in this case was afterwards reversed on review of judgment on the 23d Aug. 1849, it being found that the rules of Reg. XIX. of 1814 were not applicable to the village in dispute, which appeared to be of the nature described in Reg. IX. of 1811, and consequently the division could only be effected under the provisions of that law. See 4 Decis. N. W. P. 291.

PARTNER.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 7.
1. *Generally*, 7.
2. *Limitation as to Suits by. See* Limitation, 92.
3. *Suit by.—See* Practice, 95.

I. In the Supreme Courts.

1. One partner cannot bind another by deed without the express assent of the latter; such act being beyond the ordinary scope of a partner's authority. *Agabeg* v. *Jellicoe.* 2d Feb. 1847. Taylor, 51.

2. *A* (the plaintiff) entered into a covenant under seal, but signed the instrument in the name of his firm. Held, that he was sole covenantee, and therefore rightly sole plaintiff on record. *Ibid.*

3. By the 7th clause of a deed of partnership it was provided "that the partnership should continue for five years, two months, and seven days, during which term no partner should retire without the consent of his co-partners, but that the senior partner should have the power of making any new arrangements annually which he might deem requsite for the interest of the new partnership and its constituents, either in regard to the retirement or admission of partners, or the extent of their shares." The 22d clause provided, "That in case of the retirement or *removal* of any of the partners during the co-partnership term, his interest in the concern and profits should continue six months, to be calculated from the date of such retirement or *removal.*" The 28th clause also contained provisions "in case of the interest of any partner ceasing or determining, by reason of death, retirement, or *removal* under any preceding article." Held, that neither in the 7th clause alone, nor within the four corners of the deed,

was any power conferred on the senior partner to remove a co-partner, or dissolve the partnership, until the expiration of the time limited by the deed; and that if such power was to be implied, it should be by *necessary* implication. *Russell* v. *Ashburner*. 2d July 1847. Taylor, 114.

4. A transfer of shares in a joint-stock company does not pass past unpaid dividends, unless there be a special provision that it shall do so. *Lidiard* v. *Joseph Agabeg and others*. 21st April 1849. 1 Taylor & Bell, 30.

5. Where dividends were stated by the secretaries to a joint-stock company to be in their hands ready to be paid over to a shareholder, and previous to the payment, that shareholder transferred his shares to the Secretaries; it was held, that he could, at law, sue the Secretaries (who were partners in the company) for those dividends. *Ibid.*

6. If a partnership strike a balance with its members, one of the partners can sue at law for the share appropriated to him, although the partnership become afterwards involved; and the others cannot set up the defence that the accounts are unsettled. *Ibid.*

II. In the Courts of the Honourable Company.

7. The Courts are competent, where there appears sufficient reason for so doing, to entertain the suit of one partner against another for a settlement of accounts; the Court exercising its discretion in admitting or rejecting the suit, according to the particular circumstances of each case. *Fowle* v. *Brightman*. 25th Nov. 1848. S. D. A. Decis. Beng. 860. —Tucker & Hawkins.

8. Held, in accordance with the award of a *Pancháyit* appointed under the provisions of Reg. VI. of 1822, that where of two firms the one never shared in the profit and loss of the other, the two firms were to be considered as separate. *Deonarain Doss* v. *Doorgapershad*. 14th Feb. 1850. 5 Decis. N. W. P. 44. —Taylor, Begbie, & Lushington.

PATÍDÁR.

1. The rights held by inferior hereditary *Patídárs* are inherent rights, wholly distinct from those possessed by their superior sharers, and are not alienable or capable of absorption through any process which may be directed against the rights of such superior sharers. *Maharajah Chutterdharee Singh* v. *Kirtarut Rai and others*. 29th Aug. 1850. 5 Decis. N. W. P. 269.—Begbie, Lushington, & Deane.

PATNÍ.—See Land Tenures, 14 *et, seq.*; Limitation, 124; Patnídár *passim*; Sale, 73 *et seq.*, 103, 104.

PATNÍ BHÁGA.—See Partition, 4, note.

PATNÍDÁR.

1. The omission of former *Zamíndárs* to enforce their rights against *Patnídárs*, who held under a lease given by a former *Zamíndár*, does not affect the right of a subsequent proprietor to oust them. *Kishenmunnee Debbea and another* v. *Baboo Dooarkanath Thakoor*. 3d Nov. 1845. S. D. A. Decis. Beng. 316. —Jackson.

2. A plaintiff having distinctly shewn by decisions that he was actually in possession as *Patnídár*, as well as by having paid the *Patní* rent by lodging it when the estate was in balance; the mere circumstance that the *Kabúliyat* of the defendant, the *Darpatnídár*, was written in the name of the plaintiff's son, and not of the plaintiff himself,

cannot vitiate his claim, that son having all along allowed that the property belonged to his father. *Juggomohun Mookerjee* v. *Kalee Kant Deb and others.* 12th Nov. 1845. S. D. A. Decis. Beng. 415.—Reid, Dick, & Jackson.

3. A successor to a *Patní* tenure by inheritance is not liable to the payment of any fees; Sec. 5. of Reg. VIII. of 1819, applying only to the alienation of a *Patní Talook* by sale, gift, or otherwise, as set forth in Sec. 3. of that Regulation. *Konwur Ram Chunder Bahadoor* v. *Monohora Dossee and others.* 16th July 1846. S. D. A. Decis. Beng. 284.—Tucker, Reid, & Barlow.

4. Security was ordered to be furnished by *Patnídárs* on their being put into possession under a decree. *Ibid.*

5. The arrears of rent of a *Patní Talook* were decreed against the widows of the original *Patnídár*, they having neglected to resort to the easy remedy, provided by Sec. 5. of Reg. VIII. of 1819, of relieving themselves, by compelling the *Zamíndár* to record the transfer and erase their names. *Petumburee Dossea and another* v. *Chukoo Ram Singh and another.* 5th Nov. 1846. S. D. A. Decis. Beng. 372.—Reid, Dick, & Jackson.

6. As a general principle, *Patnídárs* cannot claim a reduction of rent on the ground of defective assets unless on proof of deceit on the part of the *Zamíndár.* *Rajah Muhtab Chunder* v. *Lall Mohun Banerjea.* 26th May 1847. S. D. A. Decis. Beng. 168.—Dick, Jackson, & Hawkins.

7. A dependent *Patnídár* is competent to sue for the resumption and assessment of lands held as *Lákhiráj* within his *Patní.* *Rao Ram Shunker Raee* v. *Moulvee Syud Ahmed and others.* 25th March 1848. S. D. A. Decis. Beng. 234. —Tucker, Barlow, & Hawkins.

8. A purchaser of a *Patní* tenure at a public sale succeeds to all the rights of a former incumbent, and, like him, is entitled to obtain possession of whatever was included in the original document by which the *Patní* was constituted; and whatever was included in that document, and is not made over to him, provided it was not stated at the time of sale to be disputed, forms a just ground for a reduction of rent. *Rajah Muhtab Chundur* v. *Lall Mohun Banerjea.* 26th May 1847. S. D. A. Decis. Beng. 168. — Dick & Jackson. (Hawkins dissent.) *Muharajah Muhtab Chundur Bahadoor* v. *Ram Mohun Banerjee.* 3d June 1848. S. D. A. Decis. 506.—Tucker & Barlow. (Hawkins dissent.)[1]

9. Engagements expressly providing for a specified number of villages, mentioned by name, being made over, a *Patnídár*, or a purchaser of his rights, is entitled to sue for a proportionate remission of rent, if the stipulated number of villages be not made over. *Bishennath Palodhee* v. *Muharajah Mahtab Chundur Bahadoor.* 13th Dec. 1849. S. D. A. Decis. Beng. 452. —Barlow, Colvin, & Dunbar.

10. A *Patnídár* can contest the validity of alleged rent-free tenures within his *Patní.* *Rajkishore Raee* v. *Soomer Mundul and others.* 15th March 1849. S. D. A. Decis. Beng. 66.—Jackson.

11. Where the terms of a *Patní* lease transfer to the *Patnídár* all the rights of the *Zamíndár*, such *Patnídár* can sue to resume invalid *Lákhiráj* lands within his tenure.

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[1] The majority of the Court in both these cases agreed, that in putting up the *Patní* tenure to auction with the full *Jama*, and as including the whole number of *Mauzas*, notwithstanding a reduction had been made on account of the defect of some of them, the *Zamíndár* was guilty of bad faith, and was therefore bound to refund the surplus *Jama* paid by the purchaser of the *Patní*. Mr. Hawkins dissented, on the ground that he could see no fraud, nor attempt at fraud, with reference to the terms in which the contracts were drawn.

Rajkishore Raee v. *Soomer Mundle and others.* 19th Sept. 1850. S. D. A. Decis. Beng. 498.—Barlow, Jackson, & Colvin.

PATWÁRÍ.—See EVIDENCE, 27.

PAUPER.

I. ACTIONS AND SUITS BY.—See PRACTICE, 437 *et seq.*
II. APPEALS BY.—See APPEAL, 6. 68, 68*a*.
III. LIMITATION OF SUITS BY.—See LIMITATION, 11.

PAWN.—See PLEDGE.

PAYMENT OF MONEY INTO COURT.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.

I. IN THE SUPREME COURTS.

1. Where the purchase-money was paid into the hands of the Master of the Court, it cannot be strictly considered as being paid into Court; and if the money has been allowed to remain in the Master's hands, and is lost, no certificate of payment into Court can be granted. *Paterson* v. *Imlach.* 21st March 1849. 1 Taylor & Bell, 11.

II. IN THE COURTS OF THE HONOURABLE COMPANY

2. Application for permission to deposit in Court rents which the proprietor of the land had refused to receive, was rejected, all summary proceedings connected with rent having been transferred from the Civil Courts to the Collectors. *Gobind Chunder Ray, Petitioner.* 16th April 1840. 1 S. D. A. Sum. Cases, Pt. i. 30.

PERJURY.—See CRIMINAL LAW, 54 *et seq.*; 175 *et seq.*

PETITION OF APPEAL.—See APPEAL, 38.

PILOT.—See SHIP, 3.

PLAINT.—See PRACTICE, 163 *et seq.*

PLEA.—See PLEADING, 9 *et seq.*; JURISDICTION, 10.

PLEADER.

I. GENERALLY, 1.
II. WHAT ACTS ARE BINDING ON CLIENT, 3.
III FEES, 6*a*.
IV VAKÁLAT NÁMEH, 15.

I. GENERALLY.

1. A pleader cannot be required to exhibit the instructions of his client. *Raj Kishn Surma, Petitioner.* 16th Sept. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 86.—Reid.

2. There is no law prohibiting a *Vakíl* from allowing other party or parties to carry on a suit in which he is principally interested, nor authorising a Judge to dismiss peremptorily, without judicial decision, a case in which this may appear. *Goordyal Chowdhree and others* v. *Nundkishore Ghose and others.* 3d Aug. 1849. S. D. A. Decis. Beng. 323.—Jackson.

2*a*. Held, that a party is competent to dismiss his pleader from the conduct of his case without *at the same time* appointing another. But he must do so within six weeks from the withdrawal of the power delegated to his former pleader, or state that he will conduct the case himself, otherwise his suit will be dismissed under Act XXIX. of 1841. *Sayyad Rahut Ally, Petitioner.* 23d July 1850. 2 Sev. Cases, 583.—Colvin.

II. What acts are binding on Client.

3. Where the *Vakíls* of the Court, and not the parties to a suit themselves, agreed to the case being taken out of the hands of five persons appointed by the Judge as a *Panchâyit*, and transferred it to one of such persons only for decision, and signed an *Ikrár námeh* to that effect; it was held, that such proceeding on their part was illegal, as, when once the case had left the walls of the Court House, the *Vakíls*, who could only act as officers of the Court, ceased to have any authority in the matter. *Syud Behtur Alee* v. *Syud Massoom Alee and others.* 11th Feb. 1847. 2 Decis. N. W. P. 40. —Thompson.

4. A pleader in a suit admitting a claim, or such a compromise as will admit of a judgment being passed, the decree is to be given in conformity with the arrangements entered into by the parties; nor can the decision be reversed by the Appellate Court on the ground that the pleader has been guilty of fraud. The proper remedy in such a case is for the aggrieved party to prosecute the pleader, and the party who has injured him, in a regular suit to establish collusion, and thus to set aside the fraudulent decree. *Seyud Koorban Alee* v. *Ghuffooroonnissa.* 15th Sept. 1847. 2 Decis. N. W. P. 329.—Tayler, Begbie, & Lushington.

5. Inquiry may be made as to the validity of an admission made by a pleader on the part of his client; but application for that purpose should be made with the least possible delay, and, when practicable, in the Court in which such admission was made. *Ram Nath Gosain* v. *Omer Chaund Saho and others.* 6th Sept. 1849. S. D. A. Decis. Beng. 382. —Dick, Barlow, & Colvin.

6. A pleader, having expressed the willingness of his client to abide by the statement of a particular witness on oath, and his client having been present, without offering any objection, during the examination of such witness, a decree founded upon such examination cannot be impugned by the client.[1] *Gour Mohun Gosain and others* v. *Holodhur Ghose and others.* 20th Dec. 1849. S. D. A. Decis. Beng. 481.—Barlow, Colvin, & Dunbar.

III. Fees.

6*a*. Held, that if, in a claim against several defendants holding separate interests, such separate interests be specified in the plaint, the defendants may deposit their *Vakíls'* fees in proportion to their respective interests; but that, if there be no such specification of interests, each defendant must deposit according to the amount of the entire claim.[2] *Rani Indrani, Petitioner.* 22d June 1836. 1 S. D. A. Sum. Cases, Pt. i. 10. Full Court.[3]

7. If a case be withdrawn previously to the completion of the pleadings, the *Vakíls* are only entitled to receive one-fourth of the full amount

[1] And see the Case of *Bajpie Rajah Gungesh Chunder* v. *Suroop Chunder Sirkar.* 7 S. D. A. Rep. 130. And see *infra*, Tit. Practice, Pl. 447.

[2] Of course no deposit at all would be required from parties settling with their pleaders, under Reg. XII. of 1833.

[3] Messrs. Braddon and D. C. Smyth were of opinion that the proportionate deposit was admissible, even without any specification of interest in the plaint.

of their fees. *Baboo Dumodhur Doss* v. *Maha Rajah Narain Gujpattee Raj*. 23d Nov. 1846. 1 Decis. N. W. P. 197.—Thompson, Cartwright, & Begbie. *Gunga Kishen Tewaree and others* v. *Mt. Ramkour and others*. 7th Dec. 1846. 1 Decis. N. W. P. 242.—Tayler, Thompson, & Cartwright.

8. The full amount of *Vakil's* fees agreed to be paid by each of two defendants was awarded to the defendants on the dismissal of the plaintiff's claim, such amount being within the limit prescribed by law, that is to say, five per cent. upon the plaintiff's claim as far as Rs. 5000, and two per cent. on what exceeds that sum. *Seth Sookaram Surbsookh and others* v. *Nundloll Chobee*. 10th Aug. 1846. 1 Decis. N. W. P. 100.—Thompson, Cartwright, & Begbie.

9. Pleaders' fees were adjudged at one-fourth the established rates, a mere petition, in lieu of an answer, not being held to conclude the requisite pleadings, according to the penultimate proviso of Cl. 1. of Sec. 31. of Reg. XXVII. of 1814. *Muha Ranee Konwul Koonwaree* v. *Sreenath Sein and others*. 16th June 1847. 7 S. D. A. Rep. 345.—Dick, Jackson, & Hawkins.

10. Where a case is dismissed on default after the pleadings are completed, one-half of the amount of the *Vakil's* fees should be adjudged. *Alee Hatim* v. *Sheikh Fuzul Hoossein and others*. 31st July 1847. 2 Decis. N. W. P. 225.—Tayler, Begbie, & Lushington.

11. Construction No. 500 having been declared superseded by the Circular Order of the 30th June 1848, since the passing of Act. I. of 1846, that Circular Order must be considered to have retrospective effect to the date of that Act.[1] *Jusram* v. *Dowlut Ram and others*. 29th Dec. 1848. 3 Decis. N. W. P. 429. —Tayler.

12. If, after all the requisite pleadings have been filed in Court, an order of nonsuit be made, the *Vakils* of the plaintiffs and defendants are entitled to one-half their fees. *Madob Chundur Mujmoodar* v. *Tweedie*. 8th Aug. 1849. S. D. A. Decis. Beng. 334.—Dick, Barlow, & Dunbar.

13. When separate answers for three defendants (who were sued jointly, and to the same effect), have been filed by one and the same pleader, the full fees of one pleader can only be given. *Nund Coomar Raee and others* v. *Radhanath Raee and others*. 1st Nov. 1849. S. D. A. Decis. Beng. 418.—Dick, Barlow, & Colvin.

14. Where two *Vakils* only were employed for eight separate defendants; it was held, that the plaintiff, who was nonsuited, was liable to pay them the full fees, five per cent. on the eight *Vakálat námehs*. *Rajah Salikram* v. *Agents of the Heirs of Mirza Mohumed Shahrokh Buhadur and others*. 12th Dec. 1849. 4 Decis. N. W. P. 325.—Robinson.

IV. Vakálat nameh.

15. The order of an officer of Government, filed by a Government pleader, is sufficient authority to him to plead a cause, and is admissible on unstamped paper. No *Vakálat námeh* is necessary in such a case. *Salt Agent of Twenty-four Pergunnahs, Petitioner*. 14th July 1846. 1 S. D. A. Sum. Cases, Pt. ii. 81.—Reid.

16. On the admission of a supplemental plaint, enhancing the value of a suit, it is not necessary for a defendant to file any fresh *Vakálat námeh*, his pleaders remaining compe-

[1] The Circular Order of the 30th June 1848 promulgates no new rule: it is merely declaratory of the change in the law since the enactment of Act I. of 1846, and all orders passed under that Act under the rescinded Construction are open to revision.

tent, notwithstanding the enhancement, to act under their first power. *Bundhoo Sahoo and others* v. *Baboo Ramindur Sahoo*. 26th June 1850. S. D. A. Decis. Beng. 313.—Barlow, Jackson, & Colvin.

17. A *Vakíl*, accepting a *Vakálat námeh* without indorsing on it any conditions, cannot be allowed to decline pleading when the case comes on for hearing. *Gurdial Singh, Petitioner*. 17th Sept. 1850. 3 Sev. Cases, 57.—Dick, Colvin, Barlow, & Dunbar. (Jackson dissent.)

PLEADING.

I. Common Law, 1.
1. *Declaration*, 1.
2. *Plea*, 9.
3. *Abatement*, 24.
4. *Replication*, 26.
5. *Time to Plead*, 30.
II. Equity.—See Practice, 12 *et seq.*; 16 *et seq.*
III. Plea to the Jurisdiction.—See Jurisdiction, 10.

I. Common Law.

1. *Declaration.*

1. A count in detinue for Company's paper, with an indebitatus count, in debt, where but one transaction, were allowed.—*Nubkissen Sing* v. *Bissonauth Dey Sickdar*. 16th Jan. 1846. Montriou, 7.

2. The particulars under the indebitatus counts were for the amount of a Government note lent to the defendant, and of which he had received the proceeds. Held, that the plaintiff must elect between the count for money lent and money had and received to his use. *Ibid.*

3. The Court, on application to strike out counts, are entitled to look at the particulars, but do not inquire into the truth or honesty of the plaintiff's case. *Ibid.*

4. Where the avowry was,—that *A* was seised in fee of a *Talookdárí*, of which certain lands, &c., were parcel, of which lands, &c. the *locus in quo* was parcel; a grant of rent by *A* arising out of and chargeable upon the *locus in quo*, with power of distress to the avowant:—a plea,—that *A* was not seised in fee of the *Talookdárí*, and of the lands, &c., of which the *locus in quo* was parcel, *modo et formâ*,—was held good on special demurrer. *Russomoy Dutt* v. *Rajah Radhakant Deb Bahadoor and another*. 5th Feb. 1846. Montriou, 51.

5. The plaint (after setting out the practice of the Court as to the time allowed on writs of *Capias* for perfecting special bail), alleged that the defendant sued out a writ of *Capias* against plaintiff, requiring him to put in bail within eight days after execution on him of the writ. It then averred,—"that such writ was intended by the Court to have been executed, and ought to have been executed, within Calcutta, or ten miles thereof; yet that defendant, wrongfully, maliciously, and unjustly contriving and intending to imprison, harass, and oppress plaintiff, and to cause and procure him to be arrested and imprisoned at a great distance, to wit, 1500 miles from Calcutta, viz. at Moulmein, and to prevent plaintiff from having time to put in bail, and to deprive him of the opportunity and power of putting in bail within the period limited; afterwards, to wit, &c., wrongfully and maliciously delivered the writ to the Sheriff for the purpose of being executed at Moulmein, and arrested him thereunder at Moulmein." Demurrer, on the ground (among others) that the plaint contained no averment that, when the writ was delivered to the Sheriff, defendant was not actually resident in Calcutta, or within ten miles thereof; or that the writ could not have been executed within those limits; that, therefore, the allegation of the delivery of the writ to the Sheriff for a wrong-

ful and malicious purpose was but inferentially alleged. Held, that the malicious intent, and circumstances shewing it, were sufficiently alleged. *Framjee Ruttonjee* v. *Nusseerwanjee Ruttonjee*. 28th June 1847. Taylor, 100.

6. A plaint on Union Bank post bills contained counts, describing the instruments, in one set, as bills of exchange, and, in another, as promissory notes. Held, that these counts were not in apparent violation of the 6th Plea Rule of Hilary Term 4th Will. IV.[1] *Braddon and others* v. *Abbott*. 28th Feb. 1848. Taylor, 330.

7. The plaint stated that "defendant, being master of a ship, had the care of a certain chattel for safe conveyance therein." Held, on demurrer, that this was a sufficient averment from which the defendant's duty as a common carrier might be inferred. *Browne and another* v. *Brown*. 27th March 1848. Taylor, 333.

8. A plaint on the case for injury to the plaintiff's reversion alleged, "that defendant, while in the occupation of the premises as tenant, committed waste," omitting the usual words that defendant was "tenant of the plaintiff." Held, on demurrer, that the plaint was sufficient. *Storm* v. *Homfray*. 5th July 1849. 1 Taylor & Bell, 49.

2. *Plea.*

9. A plea of payment after action brought must be expressed to be pleaded in bar of the *further* maintenance of the action, notwithstanding the 10th Plea Rule. *Hullodhur Bhose* v. *Muddoosooden Coondoo*. 2d Feb. 1846. Montriou, 47.

10. A plea, that the promise was expressly by defendant as Commissioner of Revenue, in which capacity he was subject to the control of the Sudder Board; and that the breach complained of was by order and direction of the Board, was held to be bad, amongst other reasons, for ambiguity, and as not disclosing a justification. *Young and another* v. *Jackson*. 31st March 1846. Montriou, 188.

11. A plea,—that defendant committed the act complained of as a breach of promise, in the lawful exercise of a judicial office in a County Court, and exercising the powers of the Court of Wards,—was held to be bad, for uncertainty, and not bringing the case within the 21st Geo. III. c. 79. s. 24.[2] *Ibid.*

12. A set off in bar of future maintenance of an action cannot be pleaded. *Nichol and others* v. *McCallum*. 16th July 1846. Montriou, 258.

13. Trespass against the Sheriff for breaking and entering three closes of the plaintiff, and seizing and sealing three *godowns* situated thereon. Third plea: After stating that a writ had been issued by the Judge of Zillah Backergunge, directed to the *Názir* of that Zillah, commanding him to distrain certain lands, goods, and chattels, as per accompanying list, "A pucka situated in Sotah Looty Hautcollah, belonging to *A* and others," in satisfaction of a decree against them by the Court of Sudder Dewanny Adawlut, proceeded to justify thereunder, stating that the above writ, being duly delivered into the office of the defendant as Sheriff, and duly indorsed under the hand and signature of a Judge of the Supreme Court (according to the provisions of Act XXIII. of 1840), the defendant was directed to execute the same as such Sheriff (which he did), within the limits of Calcutta, and thereby committed the trespass complained of. Demurrer, in substance, that the plea disclosed no defence to the action, and that it

[1] 2 Sm. and Ry. 41.

[2] The extent of protection given by the Act is defined by the judgment of the Judicial Committee of the Privy Council in *Calder* v. *Halket*. 3 Moore, 28. 2 Moore Ind. App. 293.

contained an argumentative denial of plaintiff's property. Held, on both points, that the plea was good. *Radanath Saha* v. *Smith*. 8th July 1847. Taylor, 127.

14. To an action brought by the representatives of *A*, against the executors of *B*, upon a contract by the latter to indemnify *A*, on default in payment of a debt due by *C*, *D*, and *E*, to *A*, the defendants pleaded, that, before breach, *C*, *D*, and *E*, at the request of *A*, made their indenture, and sealed and delivered the same, as their act and deed, to *A*, which indenture *A* accepted in full satisfaction and discharge of the promise of *B*. The plea of the defendants was held bad, on the ground that the indenture should have been described, or it should have been stated to be of some value, or that some consideration passed. *Rajindrochunder Neoghy* v. *Gordon and others*. 12th July 1847. Taylor, 144.

15. Trespass for false imprisonment against the Sheriff's bailiff. Plea: justification under the warrant. Replication: as to portion of imprisonment, that the Sheriff *duly*, under his hand, directed defendant to release plaintiff, but defendant neglected so to do. Rejoinder: that the debt and costs were unpaid, and the Sheriff, without the license of the execution creditor, wrongfully and unlawfully directed a release. Held good, on demurrer assigning as cause that the bailiff could not dispute the Sheriff's authority or orders. Held, also, that the word *duly* did not sufficiently shew that the Sheriff acted under proper authority. *Beharriram* v. *Lyon*. 10th Nov. 1847. Taylor, 177.

16. Assumpsit by the third indorsee of a promissory note. A plea; that the note was made for the accommodation of the first indorsee, and without consideration for the making or payment thereof, or for the indorsement thereof by the first and second indorsee; that the note remained (without authority from the drawer to negociate it) outstanding in the hands of the second indorsee, who, after due date, indorsed to the plaintiff; was held bad. *Nursingchunder Bose* v. *Panchcowrie Day Chowdry*. 15th Nov. 1847. Taylor, 193.

17. Assumpsit by the third indorsee of a promissory note. A plea; that the note was an accommodation note, and given without consideration, and subject to an agreement to the effect, that certain unadjusted accounts between the original parties to the note should be adjusted prior to its reaching maturity; that if the balance proved in favour of the drawer, the note should not be enforced against him by any one; that the balance did turn in his favour, but the note was indorsed fraudulently to the plaintiff after due date; was held good. *Ibid.*

18. Counts on promissory notes. Second plea: As to Company's Rs. 426, parcel, &c.,—a decree for defendant in the Court of Requests for the same cause of action to that extent. Third plea: As to residue beyond Company's Rs. 426, parcel, &c.,—that plaintiff impleaded defendant in the Court of Requests for the latter amount, and at the same time released the residue in accordance with the practice of the Court, and the proclamations and orders of the Governor-General of Bengal made in that behalf under the 39th and 40th Geo. III. c. 79. Held, on demurrer, that the second plea contained a good and conclusive defence, and was rightly pleaded by way of estoppel. Held, also, that the third plea was bad, inasmuch as the last proclamation conferred no power to release the surplus, in the event of a claim exceeding Sicca Rs. 400, so as to enable a plaintiff to bring his case within the jurisdiction of the Court of Requests. *Aga Abdool Hossain* v. *Peepee Jaun*. 18th Nov. 1847. Taylor, 248.

19. The Statute of Limitations is pleadable in the Supreme Court by

Hindús. *Beerchund Podar* v. *Ramnath Tagore and others.* 10th Dec. 1849. 1 Taylor & Bell, 131.

20. And semble, it is the only applicable bar. *Ibid.*

21. A plea that the causes of action did not accrue within ten years is bad on special demurrer as not following the statutory bar. *Ibid.*

22. When issue is joined on such a plea, and found for the defendant, the plaintiff cannot obtain judgment *non obstante veredicto.* *Ibid.*

23. A plea in bar, if well founded, is sufficient without pointing out the Court in which the suit ought to have been brought. *Spooner* v. *Juddow.* 14th Feb. 1850, 6 Moore, 257.

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3. *Abatement.*

24. The 18th and 19th Plea Rules apply to pleas in abatement: the strict practice of Westminster Hall as to the time of filing those pleas has not been introduced into the Supreme Court. *Stewart* v. *Steel.* 16th July 1846. Montriou, 252.

25. A plea in abatement to the jurisdiction of the Supreme Court must point out another Court before which the matter is cognizable. *Spooner* v. *Juddow.* 14th Feb. 1850. 6 Moore, 257. 4 Moore Ind. App. 353.

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4. *Replication.*

26. Trespass. The declaration alleged that defendant on a certain day assaulted the plaintiff, and then seized and struck him many blows, and dragged him along the ground, and damaged his wearing apparel. Second plea: Justifying the whole of the trespasses alleged, on the ground that defendant was possessed of a close wherein the plaintiff was unlawfully making a great noise and disturbance. Third plea: Justification in defence of servants of defendant, on whom plaintiff had made violent assault. Replication: *De injuriâ,* and new assignment of excess. Held bad, for duplicity, and that plaintiff was confined to trespasses on one occasion. *Griffiths* v. *Spence.* 25th June 1847. Taylor, 84.

27. To detinue for cow hides delivered by the plaintiff to the defendant, to be re-delivered on request, defendant pleaded in substance, "That the goods were deposited with him on account of a loan to plaintiff, repayable on demand, under an agreement empowering defendant, in case of default in repayment, to sell at the *Bázár* price, and to charge commission, and retain the same, as well as the principal, out of the proceeds of the sale." The plea then averred, that, after demand of the sum due, and refusal to pay, defendant contracted to sell at the *Bázár* price. Replication, "That, after demand of payment and default, and before defendant entered into any binding agreement to sell, plaintiff tendered a large sum, to wit, Rs. 1500, in full satisfaction of the sum due, and then requested the defendant to re-deliver the cow hides, which defendant refused. Demurrer, in substance,—That the replication did not shew that the authority to sell was revocable after demand of payment and default thereon; or after defendant had entered into contracts to sell; or that the authority was revocable at all without the consent of defendant. And also, that the statement as to tender "of a large sum, to wit, Rs. 1500, in full satisfaction of the sum due," was informal. Held, as to both objections, well pleaded, and the demurrer was overruled, with liberty to defendant to rejoin. *Moonshee Abdool Hulleim* v. *Bowanychurn Sein.* 28th June 1847. Taylor, 93.

28. Where a plea admits an apparent title and an apparent breach, *de injuriâ* should be replied. *Dallas* v. *Rughoobor Dyal and others.* 23d July 1849. 1 Taylor & Bell, 59.

29. And where to a plaint on a Bill of Exchange the defendant pleaded a plea admitting that the

plaintiff was the holder, but setting forth circumstances disentitling him to receive payment, the replication *de injuriâ* was held good. *Ibid.*

5. *Time to Plead.*

30. An application for six months time to plead, on the ground that all the papers connected with the case were in England, was refused; but a reasonable time (a week) was allowed under the circumstances. *Campbell* v. *Eglinton and others.* 9th July 1849. 1 Taylor & Bell, 73.

PLEDGE.

1. A pledge, subsequent to a private partition of landed property, of the share of one member by another member of the family, was held to be unjustifiable and illegal. *Anund Chunder Lal* v. *Lala Jeo Lal and others.* 16th March 1847. S. D. A. Decis. Beng. 74.—Rattray.

POLICY.—See INSURANCE, 1 *et seq.*

POSSESSION.

I. HINDÚ LAW, 1.

II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.

III. MUHAMMADAN LAW. — See GIFT, 7, note; MORTGAGE, 4, note; SALE, 3.

I. HINDÚ LAW.

1. A son born after decree made cannot summarily get possession of property adjudged to his brothers and cousins, who were parties thereto, notwithstanding the opinion of the *Pandit* that such after-born son had equality of right with the brothers and cousins in the ancestral estate of his maternal uncle. But this was held, by the Sudder Dewanny Adawlut, not to narrow his remedy by legal recourse to the institution of a regular suit.[1] *Bejoy Govind Burral and another, Petitioners.* 30th Dec. 1834. 1 S. D. A. Sum. Cases, Pt. i. 3.—D. C. Smyth.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

2. *A*, being owed a sum of money by *B*, the father of *C* and *D*, obtained a decree against *C* alone; *C's* rights and interest were sold in realization of the decree, and bought by *F*. Afterwards, *G* obtained a decree against *D*, the other son of *B*, for a sum of money, and *D's* rights and interests were sold and bought by *G* himself, who brought a suit against *F* to establish his right to have his name recorded as proprietor of *D's* share, and to obtain separation of the same. *B* had died more than twelve years previous to the institution of the suit. The Moonsiff decided that *D* never was in possession, and dismissed the suit. The Judge, considering this was not a point for decision, passed over it without adjudication, and gave a decree in favour of *G*. Held, by the Sudder Dewanny Adawlut, that the possession of *D* after his father's death, and of *G* since his purchase, ought to be determined in the first instance, as *G* could not sue for separation until it was shewn that *D* had held possession within the term allowed by the law of limitation. *Hursukay and another* v. *Nundlall and another.* 13th May 1846. 1 Decis. N.W.P. 9.—Thompson.

3. The general rules for delivering possession under orders of Court apply to cases under Act XIX. of 1841. *Fatima Khanum, Petitioner.*

[1] The after-born son afterwards instituted a regular suit, and it was decided that he was entitled to share with his brothers and cousins. *Aulim Chund Dhur* v. *Bejai Govind Burrall and others.* 26th March 1838. 6 S. D. A. Rep. 224. And see Vol. I. of this Digest, Tit. INHERITANCE, Pl. 166—170, and the notes thereto.

27th May 1848. 1 S. D. A. Sum. Cases, Pt. ii. 139.—Tucker, Barlow, & Hawkins.

4. Continued right to a farm, solely on the ground of long possession, cannot be adjudged in the absence of any specific contract. *Tikut Sodhur Singh* v. *Gundoo Singh.* 8th Jan. 1849. S. D. A. Decis. Beng. 9—Dick.

5. Possession given in execution of a decree of Court, though erroneous, does not constitute fraudulent acquisition within the meaning of Reg. II. of 1805. *Baboo Rama Singh and others* v. *Baboo Dhyan Singh and others.* 26th April 1849. S. D. A. Decis. Beng. 125.—Barlow & Colvin. (Dick dissent.)

POTTA. — See Lease, *passim;* Notice, 1.

POWER OF ATTORNEY.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company, 3.

I. In the Supreme Courts.

1. The plaintiff, by power of attorney, appointed *A* & *B*, carrying on business under the firm of *A*, *B*, & *Co.*, to be his true and lawful attorneys, and attorney, jointly and severally, in their individual names, or in the name of the said firm, &c., on his behalf, to *sell*, *indorse*, and *assign*, or to receive payment according to the course of the Treasury, of all or any of the securities of the East-India Company, &c., to which he then was, or might lawfully be, entitled, &c. Held, that no authority, empowering to *pledge* the securities in question, was thereby conferred upon the agents. It was also held, that the agents, under the above power of attorney, could not become purchasers or transferrees of the above securities, as they would then, by their own act, create in themselves an interest at variance with their duty, as vendors for, and agents of, their principal.[1] *M'Leod* v. *The Bank of Bengal.* 1st Feb. 1847. Taylor, 28.

2. *A*, *B*, & *Co.* were agents of plaintiff, who (being indebted to them) transmitted, at their request, a power of attorney authorising them to *sell*, *indorse*, and *assign* certain Company's paper of plaintiff, in their hands. On receipt of the power of attorney, *A*, *B*, & *Co.* first sold to themselves, and then pledged, the securities with the bank. Shortly afterwards, *A*, *B*, & *Co.* failed: their schedule shewed a balance in favour of plaintiff, who, without objecting to the acts of *A*, *B*, & *Co.*, received two dividends as a creditor upon the amount. Held, first, that, as the evidence did not shew a sale *in fact* by *A*, *B*, & *Co.* to themselves, such sale must be treated as imaginary, and that *A*, *B*, & *Co.*, when they pledged to the bank, were acting under the power, which gave no authority to *pledge;* secondly, that, as there was no proof of the plaintiff's knowledge of the real state of circumstances attending the alleged sale, there was no recognition on his part of the acts of *A*, *B*, & *Co.* Held, also, that interest, under the circumstances, in the nature of damages, under Act XVI. of 1841, could not be allowed.[2] *Fagan* v. *The Bank of Bengal.* 13th Jan. 1848. Taylor, 269.

III. In the Courts of the Honourable Company.

3. A power of attorney, executed

[1] The judgment in this case was reversed by the Judicial Committee of the Privy Council on the 19th July 1849. Taylor, 434*b*. 7 Moore, 35.

[2] This decision was reversed by the Judicial Committee of the Privy Council on the 19th July 1849. Taylor, 434*b*. 7 Moore, 61.

in England, was, under the circumstances, held to have been sufficiently attested by the affidavits of persons acquainted with the handwriting of the party executing the power. *Rose, Petitioner.* 15th Feb. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 91.—Reid.

4. Principals having given their agent a power of attorney to borrow money on their account, and having executed a bond for the actual amount received by him as a loan on their behalf, are liable to the lender for the whole of such amount, notwithstanding any misappropriation of the money by the agent. *Mt. Mun Mohunnee and another* v. *Gunga Purshad and others.* 1st May 1850. S. D. A. Decis. Beng. 165.—Jackson & Colvin. (Dick dissent.)

PRACTICE.

I. In the Privy Council, 1.

II. In the Supreme Courts, 2.

1. *Generally*, 2.
2. *What Law administered between parties*, 2 *a*.
3. *Equity*, 2 *b*.
   - (*a*) *Generally*, 2 *b*.
   - (*b*) *Parties to Suits*, 10.
   - (*c*) *Bill*, 12.
   - (*d*) *Subpœna*, 15.
   - (*e*) *Answer*, 16.
   - (*f*) *Demurrer*, 19.
   - (*g*) *Injunction*, 21.
   - (*h*) *Receiver*, 31.
   - (*i*) *Amendment of Bill.*—See Amendment, 1 *et seq.*
4. *Costs.*—See Costs, 1 *et seq.*
5. *Contempt.*—See Contempt, 1, 2.

III. In the Courts of the Honourable Company, 41.

1. *Generally*, 41.
2. *What Law administered between parties*, 72.
3. *Process*, 83.
4. *Parties*, 84.
5. *Representation*, 132.
6. *Third Party*, 145.
7. *Subpœna*, 160.
8. *Proclamation*, 161.
9. *Plaint*, 163.
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    - (*b*) *Substance of Decree*, 255.
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    - (*g*) *Decree in Appeal.*—See Appeal, 146 *et seq.*
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17. *Confession of Judgment*, 329.
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19. *Powers of Judges*, 343.
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22. *Suits by Paupers*, 437.
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24. *Withdrawal of Claim*, 449.
25. *Where Trial should take place.*—See Jurisdiction, 71. 75 *et seq.*
26. *In Actions.*—See Action *passim.*
27. *In Appeals.*—See Appeal, 73 *et seq*, 148 *et seq.*; Notice, 7 *et seq.*
28. *In Awards.*—See Arbitration, 34 *et seq.*
29. *In Mortgages.*—See Mortgage, 88 *et seq.*
30. *Notice of change of Parties.*—See Notice, 5, 6.
31. *Costs.*—See Costs, 6 *et seq.*

I. In the Privy Council.

1. The Judicial Committee of the Privy Council will not entertain a

purely technical objection to a party's right of action, which has not been made in the Court below. *The Bank of Bengal* v. *Macleod.* 6th July 1849. 7 Moore, 35.

1 *a.* Upon the reversal of the judgment of the Supreme Court at Calcutta, finding for the plaintiff, the Judicial Committee of the Privy Council, in the circumstances of the constitution of the Supreme Court, directed a verdict to be entered for the defendants, instead of awarding a *venire de novo. Ibid.*

1 *b.* Petition to dismiss an appeal from the Sudder Dewanny Adawlut at Calcutta, and for an order directing that Court to carry into execution the terms of a deed of compromise, upon which the withdrawal of the appeal was founded; refused. All the Judicial Committee of the Privy Council will do, in such circumstances, is to make an order of dismissal, reserving to the parties leave to apply to the Court in India, to take further proceedings in pursuance of such agreement. *Raja Sutti Churn Ghosol* v. *Sri Mudden Kishore Indoo.* 12th Feb. 1850. 7 Moore, 140.

1 *c.* An objection raised for the first time at the hearing of an appeal before the Privy Council, that the Government's right to sue was barred by the law of limitation (Beng. Reg. II. of 1805), from lapse of time, was sustained; the proceedings in India before the Revenue Collector and Special Commissioner, under the Bengal Regs. II. of 1819 and III. of 1828, not being in the nature of a regular suit. *Maha Raja Dheeraj Raja Mahatab Chund Bahadoor* v. *The Government of Bengal.* 18th Feb. 1850. 4 Moore Ind. App. 466.

II. In the Supreme Courts.

1. *Generally.*

2. At the trial, certain documents contained in the schedule to the answer of the defendants to a bill of discovery filed in Equity were read as evidence for the plaintiff, but the Court refused to allow the defendants to read the answer to which the Schedule was annexed. Held, by the Judicial Committee of the Privy Council, that as the Supreme Court at Calcutta, being jurymen as well as judges, had refused to allow the answer to be read, on the ground that such answer contained nothing material to the issue which could influence their verdict, a new trial on the ground of such refusal could not be granted. *The East-India Company* v. *Oditchurn Paul.* 6th Dec. 1849. 7 Moore, 85.

2. *What Law administered between parties.*

2*a.* If a custom, otherwise valid, be found to prevail amongst a race of eastern origin, and non-Christian faith, a British Court of Justice will give effect to it, if it do not conflict with any express Act of the Legislature. *Case of the Kojahs and of the Memon Cutchees.* 11th Oct. 1847. Perry's Notes, Case 20.

3. *Equity.*

(*a*) *Generally.*

2*b.* The Supreme Court will not direct, or interfere to sanction, execution for a debt, under Act XXIII. of 1840, upon any specific property, although the writ itself command seizure of specific property. *Ex parte Rajenchunder Neoghee.* 2d Feb. 1846. Montriou, 30.

3. It appeared, from the decree and the proceedings in the Mofussil Court, that the defendant there was sued, and liable, only in a representative capacity. The Mofussil writ directed seizure of certain funds in the Supreme Court, in a suit, payable to the defendant. Application to pay those funds over to the Sheriff, under the writ, was refused; upon the ground, *inter alia*, that the funds applied for were the beneficial

property of that defendant, and not subject to satisfy the demand in the Mofussil suit. *Ibid.*

4. Under the new 28th Equity Rule of the 2d Term 1842, it is the complainant's duty to set the plea down for argument within the time limited thereby, otherwise its validity in point of law is admitted. *Beharriram* v. *Sewemberram and another.* 22d June 1847. Taylor, 80.

5. And semble, if he do not either set the plea down, or reply thereto, within such limited time, he admits its validity in point of fact as well as law. *Ibid.*

6. The pendency of another suit in the *Mofussil,* between the same parties, in respect of the same subject matter, is not pleadable in bar to a suit on the Equity side of the Supreme Court, the system and practice of procedure in the two Courts being different. *Muttyloll Seal* v. *Joygopaul Chatterjee and others.* 17th Nov. 1848. Taylor, 418.

7. In September 1849 *A* agreed in writing to sell to *B* a four-annas share, and also to assign his interest in two-annas other share of a certain indigo factory; half the purchase money to be paid at the time of execution of the conveyance, and the other half on the 1st March following. The same attorney was then employed by both vendor and vendee, but the latter shortly afterwards appointed other attornies to act on his part. Considerable delay intervened, in consequence (among other causes) of the attorney for the vendor insisting on the execution of the conveyances prepared by himself, which the purchaser's attornies declined to accept, and *vice versa.* On the 3d October, *A* gave notice that he had rescinded the contract. The following day *B*'s attornies offered their deeds of conveyance for execution, and, at the same time, tendered half the purchase money, which was refused. On the same day the defendant *C* purchased the interest contracted to be sold to *B*, and shortly afterwards sold the two-annas share to the defendant *D*. Held, that time not being of the essence of the contract, *A* had no power, under the circumstances, to rescind it; and an injunction was granted to restrain *C* from alienating his four-annas share, and to restrain *D* from alienating the two-annas share sold to him to any person not liable to the jurisdiction. *McArthur* v. *Kelsall and others.* 3d Jan. 1850. 1 Taylor & Bell, 148.

9. Semble, that the doctrine as to purchasing *pendente lite* is of less force in the Supreme Court than in England, as the alienation may be to a person not subject to the jurisdiction. *Ibid.*

(*b*) *Parties to suits.*

10. *A* (a creditor of *B* deceased) filed a simple creditor's bill (after having, on his own application, procured the appointment of the Ecclesiastical Registrar as Curator of the property of *B*) against *C* and the representatives of *B*, making the curator a party defendant, and alleging generally that through the connivance and collusion of *C* and the representatives of *B*, the Curator was unable to ascertain who had obtained possession of the property of *B* since his death. Held, that the suit was defective, inasmuch as the curator represented the estate of the deceased, and ought to have been the party complainant in the absence of any express allegation or proof of fraud, or collusion, or insolvency on his part. *Bhogoban Doss* v. *Anundchunder Sein and others.* 13th July 1847. Taylor, 154.

11. A bill was filed by a partner in an Insurance Company, to recover sums insured on two policies, against the Secretary and other members. It was alleged, that the Secretary and some "two or more" of the other defendants had acted, and signed the policies as Committee-men or Directors, on behalf of themselves

and the other members; that the shares amounted to one hundred, and were transferrable; and that, without great inconvenience, all the members could not be made parties. The bill prayed an account and relief against the whole Company. Held, on demurrer, that, in order to bind the Company, some person, representing shareholders not interested, as *signing* Directors, should have been before the Court. *Stowell* v. *Holmes and others.* 10th Jan. 1848. Taylor, 259.

(c) *Bill.*

12. Sale and conveyance of land by *A*, occupied by himself, to *B*, and attornment by *A* to *B* as tenant. *A*, in an action for rent by *B*, sets up an instrument which is an answer to the action; but he fails in proof of the instrument, and *B* obtains a verdict. *A* afterwards moves for a new trial, on the ground of surprise, and fails. Ejectment is brought for the same premises on the demise of *B*. *A* becomes insolvent: the assignee defends the ejectment, and files a bill against *B* for discovery relative to the instrument set up by *A*, and for an injunction. The equity of the bill, and as disclosed by the instrument, is, that the sale and attornment were *benámí*, and with the intent to defeat creditors. Injunction granted. *O'Dowda* v. *Rajah Dabeekistno Bahadoor.* 16th Feb. 1846. Montriou, 66.

13. Bill to enforce an agreement:—Cross-bill praying that the agreement might be cancelled, as having been fraudulently obtained; and also that certain half notes deposited as security in respect thereof might, for the like reason, be delivered up. Held, on demurrer, that the subject-matter of the bill and cross-bill was identical, as the portion of the prayer referring to the restoration of the half notes might be rejected as surplusage; and that, although the contract appeared to be illegal, still as it was *in fieri* it might be recalled, and a party be relieved against, and the half notes be recoverable at law. *Bamun Doss Mookerjee* v. *Oomeschunder Roy.* 12th Jan. 1848. Taylor, 264.

14. In Sept. 1849 *A* agreed in writing to sell to *B* a four-annas share, and also to assign his interest in two-annas other share of a certain indigo factory; half the purchase-money to be paid at the time of the execution of the conveyance, and the other half on the 1st March 1850. On the 3d Oct. 1849, *A*, believing that he had reason to be dissatisfied with the apparent delays of *B*, gave notice that he had rescinded the contract. The day following the complainant *C* purchased the interest contracted to be sold to *B*, and on the 19th Oct. sold the two-annas share above adverted to to one *D*. *B* thereupon filed his bill for specific performance, and obtained an injunction to restrain alienation *pendente lite.* The complainant then filed a cross-bill, praying that the agreement between *A* and *B* might be cancelled by reason of laches of the latter, or (in the alternative) that the purchase-money might be ordered to be paid by *B* to the complainant *C*, in the event of the agreement being upheld. Held, that the prayer of the bill was not maintainable, on the grounds, 1stly, that no fraud was proved; 2dly, that no cloud was thrown on *C*'s title; 3dly, that *C* had not entitled himself to the purchase-money, as no privity was shewn to exist between him and *B*; and 4thly, that although the bill might have been maintainable as a pure bill of discovery, still, as one seeking relief as ancillary to that discovery, it was demurrable. *Abbott* v. *M'Arthur and others.* 11th July 1860. 1 Taylor & Bell, 170.

(d) *Subpœna.*

15. A *subpœna*, to compel appearance and answer of certain de-

fendants to a bill of review, was granted, although the defendants were not subject to the *general* jurisdiction of the Court, but had been defendants to the original suit, and had not objected. *Mahomed Feroze Shah and another* v. *Aftab-o-Deen and others*. 9th July 1849. 1 Taylor & Bell, 74.

(*e*) *Answer.*

16. The case made upon motion for an injunction to stay proceedings at law cannot, as a rule, be answered by affidavit. *O'Dowda* v. *Rajah Dabeekistno Bahadoor*. 16th Feb. 1846. Montriou, 66.

17. Sed quære, a special case, where the answer of an absent defendant is necessarily delayed, may be an exception. *Ibid.*

18. Defendants, in their answer to a bill filed by the assignee of an unsatisfied judgment, imputed improper motives to the assignee in taking the judgment over. Held, that such passages of the answer were impertinent. *Ramrutton Roy* v. *Hurpersaud Bose and others*. 8th Feb. 1849. 1 Taylor & Bell, 8.

(*f*) *Demurrer.*

19. The bill alleged delivery to the defendant of one Company's paper for a special purpose; failure of the purpose; and a refusal by the defendant to return the paper. Demurrer allowed, on the ground that the special purpose ought to have been set out; and also because the relief sought might be obtained at law. *Bungseedhur* v. *Money*. 21st July 1849. 1 Taylor & Bell, 57.

20. Where a bill states one general and one special ground of jurisdiction, the latter being founded on peculiar facts as to which relief is sought, the defendant cannot demur to the relief thereby sought, and to the jurisdiction thereon alleged, and also plead to the general ground of jurisdiction. *Hingun Bibee* v. *Ayna Bibee and others*. 3d Dec. 1849. 1 Taylor & Bell, 126.

(*g*) *Injunction.*

21. If the affidavit disclose a case for an injunction to stay proceedings at law until answer, unless it be met, not merely by denial, but by shewing that there is no case for an injunction at all, the injunction ought to go.[1] *Muthoora Doss* v. *Brijmohun Coondoo*. 21st Jan. 1846. Montriou, 71 note *b*.

22. Where, upon the answer, it is admitted that the subject of the action is a disputed account, the injunction to stay proceedings will not be dissolved before the hearing. *Ramchunder Sill and another* v. *Alexander and another*. 26th Jan. 1846. Montriou, 61.

23. The words "until answer or further order," mean "or such further time as the plaintiff may shew cause for the injunction being continued." *Ibid.*

24. Semble, the words "information and belief" in the answer are sufficient ground upon moving to dissolve an injunction; and whatever may be the terms of the answer, affidavits, upon this motion, in proof or contradiction, are in no case admissible, except merely to prove a document.[2] *Ibid.*

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[1] The practice in the Supreme Court as to the reception and effect of affidavits to oppose this injunction has fluctuated; see *Joynarain Mitter* v. *Muddoosoodun Chunder*. Cl. R. 1834, 148. With reference to the practice in cases of special injunction, see in *Barnsley Canal Company* v. *Twibel*. 7 Beav. 31.—Montriou.

[2] In *Edwards* v. *Jones*, 1 Ph. 501, upon a motion for production of documents, plaintiffs offered an affidavit of the date of the death of a party, being a material question in the cause, and to the right of production asked for. The admission of the affidavit was opposed, on the ground that the object of it was something more than merely to prove a document; and the counsel of the defendants referred to the dictum of Lord Langdale, in *Ord* v. *White*, 3 Beav. 357. He cited the cases of *Jefferys* v. *Smith*, 1 J. & W. 298, and *Morgan* v. *Goode*, 3 Mer. 11, as those in which the variance in Lord Eldon's

25. Semble, where the legality of a covenant is in course of trial on the plea side, the Court will be indisposed to entertain a motion for an injunction to enforce it. *Teil* v. *Teil.* 20th March 1846. Montriou, 178.

26. When a party files a bill of discovery, and states he cannot go safely to trial without it, an injunction to stay trial should go until answer, and cannot be opposed by affidavit. *Rajindro Mullick* v. *Ramgopaul Chund and others.* 1st July 1847. Taylor, 111.

27. A mortgagee of three-fifths of a joint and undivided *Talook* filed a bill for foreclosure: shortly afterwards the whole estate was suffered to be sold for arrears of Government revenue. The mortgagee then filed a supplemental bill, praying for an injunction (absolute in the first instance on the ground of waste) to restrain the mortgagor (the registered proprietor) from receiving *any part* of the *entire* produce of the sale of the whole estate. Held, that the injunction was too extensive, and ought to have been limited to three-fifths of the money, as representing three-fifths of the estate, viz. the premises mortgaged. *Mutty Loll Seal* v. *Joygopaul Chatterjee and others.* 26th July 1847. Taylor, 172.

28. Upon a bill filed to restrain proceedings at law, and for discovery, in aid of defence thereto, an injunction will not be granted where the plaintiff in equity seeks to charge the defendant in the alternative character of *partner* or *agent*. *Stubbs* v. *Wrixon.* 13th Nov. 1849. 1 Taylor & Bell, 84.

29. A *primâ facie* case for restraining the action altogether must at least be shewn, in order to obtain an injunction prayed by a bill seeking substantive relief. *Ibid.*

30. But if the bill be merely a bill for discovery, it will be sufficient to shew a case wherein the discovery sought will probably be material to the defence at law; but then such discovery should be sought in a suit properly framed, that is, in a suit limited to purposes of discovery, and of which the costs fall on the party instituting it. *Ibid.*

(*h*) *Receiver.*

31. One of several grandsons and joint devisees of a testator was charged as manager (after the death of the executor and manager under the will) with waste, fraud, and misappropriation, by the owners of eleven-annas shares of the undivided estate. He denied, and disclaimed, in his answer, having the possession or management: the other defendant was an infant. A receiver of part of the estate was applied for until the hearing, an order *nisi* obtained, and, there being no cause shewn, or opposition, the receiver of the Court was appointed. *Nubkissen Mitter and others* v. *Hurrischunder Mitter and another.* 6th Sept. 1813. Montriou, 124, note.

32. A manager of an undivided estate himself petitioned to be relieved, and obtained an order *nisi* to give up the management, and for a

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opinion from that expressed by him in *Barrett* v. *Tickell,* Jac. 154, was supposed, but erroneously, to have occurred; as in neither case were the affidavits received. The plaintiff's counsel endeavoured to draw a distinction in the application of the rule, between motions for production of documents, and for an injunction to restrain the exercise of a legal right; but the Lord Chancellor refused to admit any distinction, and, after time taken to consider and look into the cases, thus laid down the rule: "Where the question at issue is, not the existence of a document, but a fact, I think that an affidavit cannot be admitted to prove it, or an interlocutory application like the present, though the answer neither admits nor denies it. There is an apparent discrepancy between the authorities upon the subject; but I think that is the fair result of them." The order for production was made upon the answer itself. See *Manser* v. *Jenner,* 2 Hare, 600; *Gibson* v. *Nicol,* 6 Beav. 422; with reference to cases of special injunction.—Montriou. And see *supra,* Pl. 16, 17.

reference for a receiver. A petition was subsequently presented against the manager, charging him with misconduct, waste, and exclusion. An order was made that the manager should give up his management, and bring the personal estate into Court within three weeks, and the Accountant-General of the Court was appointed receiver of the estate real and personal. *Rajkistno Bonnerjee and others* v. *Tarraneychurn Bonnerjee and others.* 30th Oct. 1820. Montriou, 125 note.

33. The plaintiff prayed for an undivided share of a joint estate, as co-heir of the defendants' ancestors: the defendants claimed the property as separate. and otherwise disputed the plaintiff's claim. The decretal order at the hearing declared the family to be joint and undivided; and referred to the Master to take an account of the joint estate, with liberty to the parties to shew a division at the date specified. The order *nisi* was granted "on reading the decretal order" for a receiver of the whole estate, *or* of the share of the plaintiff. This order was afterwards made absolute for a receiver of the whole.[1] *Buddinauth Paul Chowdry* v. *Bycauntnauth Paul Chowdry and others.* 24th Nov. 1823. Montriou, 125, note.

34. In a case of alleged exclusion and non-compliance with the directions of the will by the managers and executors; the principal surviving manager behaved with great contumacy, and in disobedience of the orders of the Court for maintenance of the plaintiffs and their families. An order *nisi* was obtained for a receiver of the joint estate, but resulted, on contested argument, in consent to a commission of partition. Subsequently an order was obtained that the manager should give security within fourteen days for the regular payment of two three-annas shares of the rents; and in default of such security, or in default of regular payment, a receiver was ordered *of the two three-annas shares.* *Womischunder Paul Chowdry and another* v. *Premchunder Paul Chowdry and others.* 1st May 1827. Montriou, 128 note.

35. Where there was a decree, confirming and carrying into effect a partition, that each party should hold his share in severalty, that the elder brother should continue to pay the infant's maintenance, and a reference for a receiver of the infant's estate; the receiver of the Court was appointed receiver *of the estate of the infant.* *Kistnonundo Biswas and others* v. *Praunkissen Biswas.* 24th June 1830. Montriou, 128 note.

36. Where the joint family consisted of females and infants, and the estate was wholly unprotected, and in imminent danger from neglect; a receiver was applied for at the instance of the only adult male relative of the family, the husband of one of the co-parceners, as an act of necessity to save the property. The order *nisi* was granted for the appointment of the receiver of the Court, and, no cause being shewn, was confirmed. *Sreemutty Seebosoondery Dossee and others* v. *Ramchunder Ghose and others.* 7th Dec. 1832. Montriou, 128 note.

37. A bill was filed by the widow and heiress of the owner of two-thirds of an estate—not as member of an undivided family, but as tenant in common under a partition and a decree of the Court, and by purchase of his co-tenant's interest—in order to contest the validity of an alleged last will of her husband, set up by the owner of the one-third. The receiver of the Court was appointed receiver *of the estate of the deceased.* *Sreemutty Khettermoney Dossee* v. *Nubkissen Mitter and others.* 19th Feb. 1833. Montriou, 129 note.

[1] A petition of appeal was filed, and the Judge (Sir F. Macnaghten), suspended the order, and finally commuted it for an order upon the defendants to give security to the satisfaction of the Court.

38. The widow and heiress of one son of the intestate charged the other son with waste of the undivided estate, and with exclusion. An order *nisi* was granted for a receiver *of the plaintiff's share* of the rents and profits, but, upon argument, the rule was discharged.[1] *Sreemutty Ullingomoney Dossee* v. *Ramsabuck Mullick*. 3d May 1839. Montriou, 129, note.

39. The survivor of two brothers, equal and undivided in estate, appointed, by his last will, two of the three sons of his deceased brother to be executors of his will, and guardians of his own infant son, with directions to transfer to the latter, when of age, a seven-annas share of the joint estate in severalty. He bequeathed to the three (his nephews) the remaining nine-annas share; to his wives and daughters, money and houses (to be deducted from the seven-annas share); and he directed the mode of joint management during his son's minority. All the members of the family acquiesced in and adopted the will; but the management, with reference to the seven-annas share, was not in accordance with the trusts of the will. A motion, after decree, by the son of the testator, who had attained his majority (in a suit for his share, and for an account), for a receiver, opposed by the owners of the nine-annas share, was granted of the whole estate. *Chotto Singh* v. *Rajkissen Singh and others*. 14th Feb. 1846. Montriou, 99.

40. A motion to bring into Court certain funds received by the manager, after the order of reference, but before the appointment of a receiver, and also all securities, deeds, &c. relating to the estate, was ordered. *Ibid.* 1st July 1846. Montriou, 117.

[1] In this case the grounds of fact in support of the motion were completely met and refuted: an order was made for delivery to the widow of certain *Stridhana*.—Montriou.

III. In the Courts of the Honourable Company, 2.

1. *Generally.*

41. In a case of a summary claim against the son for payment of the debts of his deceased mother, against whom a decree had been given, the decree-holder was, under the circumstances, referred to a regular suit to try the question of liability. *Ram Chand Adhekaree, Petitioner*. 18th April 1842. 1 S. D. A. Sum. Cases, Pt. ii. 29.—Reid.

42. No plea, not urged in conformity with Sec. 25. of Reg. XI. of 1822, before the Revenue authorities, can be admitted or taken up by the Civil Court. *Phookun Sing and others* v. *Government and others*. 9th Jan. 1845. S. D. A. Decis. Beng. 12. — Rattray, Barlow, & Gordon.

43. Held, that an order passed by the Sudder Dewanny Adawlut in favour of the appellant, who was not a party to the original suit, was therefore interlocutory and merely summary, and was open to question. *Anunt Ram Bose* v. *Ram Narain Mokerjeeah and others*. 22d June 1846. S. D. A. Decis. Beng. 238. —Dick.

44. The Sudder Dewanny Adawlut reversed the illegal order of a Zillah Judge in a case in which his legal order would have been final, and not subject to appeal. *Aladh Munee, Petitioner*. 1st Sept. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 83. —Full Court.

45. Parties drawing up and filing pleadings in opposition to the provisions of Sec. 5. of Reg. III. of 1803, are liable to the consequences at any stage of the case, whether it be in the Court of first instance, or in appeal. *Hurree Dass and another* v. *Juddonath Dass*. 26th Nov. 1846. 1 Decis. N. W. P. 216. — Thompson, Cartwright, & Begbie.

46. The Lower Court having decided that a son was not liable for

his father's debts, for want of proof of succession to his property, when no such plea was urged, the Sudder Dewanny Adawlut over-ruled the judgment. *Permanund Mookerjee* v. *Thakoor Doss Ghose and others.* 9th June 1847. 7 S. D. A. Rep. 314.—Dick, Jackson, & Hawkins.

47. Plaintiff sued defendant for a debt. Defendant admitted the debt, but pleaded a set-off on account of bread furnished to the plaintiff, which the plaintiff promised should be deducted from the debt. Held, that with reference to the statement of the defendant, he ought to have been admitted to the proof of such promise, and that it was improper to refer him to a cross suit for the sum claimed by him. *Fraser* v. *Omed Ali Mistree.* 26th June 1847. S. D. A. Decis. Beng. 285. — Hawkins.

48. A money claim having been decreed in a previous suit, and subsequent instalment bonds entered into in payment thereof; it was held, that a suit for the latter does not come within the provisions of Sec. 16. of Reg. III. of 1793. *Radhanath Dutt* v. *Raj Chundur Mujmoodar.* 3d Aug. 1847. S. D. A. Decis. Beng. 395.—Dick.

49. In a suit for balances of rent, it was held, that Secs. 14. and 15. of Reg. IX. of 1833 cannot be pleaded in bar of the suit, until the Board of Revenue shall have, under Sec. 13., prescribed rules for filing the village accounts. *Dowlut Rae and others, Petitioners.* 1st March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 133.—Hawkins.

50. In a suit contesting a summary award, inquiry should be restricted to the justness or otherwise thereof, without adjudging a claim of right. *Mohummud Kamil* v. *Wukeeloddeen and others.* 18th March 1848. S. D. A. Decis. Beng. 207.—Tucker, Barlow, & Hawkins.

51. The Lower Courts declared that a certain document was a *bond*, and not a *receipt*, as urged by the plaintiff, and therefore that it required to be engrossed on a stamp of higher value, and nonsuited the plaintiff accordingly. Held, that the Lower Courts had gone out of the record, inasmuch as the objection taken by those Courts was never urged by the defendants in any stage of the proceedings. *Ramsookh* v. *Nuthoo and others.* 27th March 1848. 3 Decis. N. W. P. 95. — Tayler, Thompson, & Cartwright.

52. Where the plaintiff in an action for the recovery of a piece of land of which he asserted he had been dispossessed by the defendant, both parties claiming to hold under leases granted to them by the Collector, asked that the Collector might be referred to as to the truth or otherwise of his statement; it was held, on special appeal, that his request was a proper one, and should have been complied with. *Boolye Kewut* v. *Doteeram Kewut.* 2d May 1848. S. D. A. Decis. Beng. 394.—Hawkins.

53. The verbal consent of parties to abide the deposition of a particular witness being duly recorded; it was held, that a separate written agreement to that effect was unnecessary. *Lullit Raee* v. *Rubhi Raee and others.* 17th June 1848. S. D. A. Decis. Beng. 539.—Tucker, Barlow, & Hawkins.

54. In a suit by a widow for herself and minor son, though the former was legally heir; judgment was given in favour of her minor son, with her consent. *Mungulmunnee Dibbeea* v. *Chundrabullee Dibbeea.* 17th June 1848. S. D. A. Decis. Beng. 545.—Currie.

55. Where a sum of money is likely to be detained in Court for a considerable time, any party interested may apply for an order to have it invested in Government securities. *Ram Kummul Mundul* v. *Fukeerchund Holdar and others.* 20th June 1848. S. D. A. Decis. Beng. 555.—Hawkins.

56. Held, that the benefit of Reg.

II. of 1805 cannot be claimed for a plaintiff who did not distinctly make that claim, with a full statement of its grounds, either in his original plaint or in his replication. *Baboo Rama Singh and others* v. *Baboo Dhyan Singh and others.* 26th April 1849. S. D. A. Decis. Beng. 125.—Dick, Barlow, & Colvin.

57. *A* sued *B* in the Military Court of Requests for a sum of money unaccounted for. The Court awarded the claim of *A*. *B* appealed to the Sudder Dewanny Adawlut, and set forth that the sum he owed was due on a bond, and that *A* had agreed to receive the money by instalments. *B* had made no allusion to such bond or agreement in the Lower Court; and it was held, that it was too late to plead them in the appeal. *Vellore Rungasawmy Moodelly* v. *Puntungee Venkiah.* 1st Nov. 1849. S. A. Decis Mad. 99. —Thompson.

58. Pleas of fact must be urged in the Lower Court, or in the written grounds of appeal, before they can be admitted in the oral arguments. *Beer Nursingh Mullick and others* v. *Kalee Koomar Mullick Raee and others.* 3d Dec. 1849. S. D. A. Decis. Beng. 431*a*.—Barlow, Colvin, & Dunbar.

59. A plea of infringement of the law (Sec. 30. of Act XII. of 1841), which was clearly raised upon the averments in the case, though the law itself was not specifically quoted, must be noticed. *Hurchundur Dass and others* v. *Doorgachurn Chatterjee and others.* 13th April 1850. S. D. A. Decis. Beng. 109.—Barlow & Colvin.

60. An order passed in a miscellaneous case, under Act XIX. of 1841, is no bar to a contrary decision in a regular suit. *Tajoo Tumakoowallah* v. *Mt. Fatimah Khanum.* 18th April 1850. S. D. A. Decis. Beng. 121.—Dick, Barlow, & Colvin.

61. The Courts of first instance should be most careful to adhere strictly to the steps and rules so clearly and peremptorily laid down in Secs. 10. and 12. of Reg. XXVI. of 1814; for any glaring deviation from them, or omission of any of them, will vitiate all they do subsequently, and render their decisions null and void. *Anund Chundur Sundeeal and another* v. *Ras Munee Dassee.* 22d April 1850. S. D. A. Decis. Beng. 138.—Dick.

62. A party suing upon an exclusive title cannot, on failing to prove that title, claim in the same suit an adjudication upon a directly contrary claim of right, viz. upon a title acquired, not exclusively, but jointly, with other sharers.[1] *Neel Madhobe* v. *Peearee Dasee.* 6th May 1850. S. D. A. Decis. Beng. 175.—Jackson & Colvin.

63. In a suit brought by a number of persons, as being in joint *proprietary possession*, against a defendant, on the ground of his being a mere temporary tenant, holding over on the expiration of his lease; it is no objection to a decision in favour of one of the co-plaintiffs, that, in a former suit, it was determined that he had no *right* of inheritance in the property. *Hursoondree Gooptia and another* v. *Sumbhoonath Raee and others.* 9th May 1850. S.D.A.Decis. Beng.192.—Dick,Jackson,&Colvin.

64. A regular suit brought for rent, in reversal of the summary decision of a Collector, is to be disposed of upon the general merits of the claim, and not merely on an issue of alleged irregularity in the proceedings of the Collector. *Meer Mohummed Tukee* v. *Surbsurn Ghosal.* 16th May 1850. S. D. A. Decis. Beng. 208.—Dick, Jackson, & Colvin.

65. There is no *legal bar* to a party making a defence in a civil suit which is directly opposed to a previous decision of a Criminal

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[1] And see the case of *Muhammad Yakub* v. *Wajid-un-Nissa.* 5 S. D. A. Rep. 262.

Court. The Civil Court must judge for itself on the evidence before it, giving due weight to the proceedings of the Criminal Court. *Boodha Sen and another* v. *Gopal Bukut and others.* 15th Aug. 1850. S. D. A. Decis. Beng. 405.—Dick, Barlow, & Colvin.

66. Claims on disputed bonds or deeds cannot be made matter of set-off in an action of arrears of rent, as the parties claiming on such documents have their remedy in separate actions. *Ramnurain Singh* v. *Raee Hurree Kishen and others.* 26th Aug. 1850. S. D. A. Decis. Beng. 429.—Barlow & Dunbar. (Dick dissent.)

67. Where plaintiff had been non-suited on the ground of absence of jurisdiction on the part of the Subordinate Court with reference to the real value of the property claimed, the Sudder Adawlut, on special appeal, remarked, that, before determining on the validity of such an objection, it was incumbent on the Court of original jurisdiction to have instituted an inquiry, with a view to ascertain whether or not the provisions of Sec. 3. of Reg. III. of 1802, and of Cl. 1. of Sec. 4. of Reg. XII. of 1809, had been duly observed, instead of acting upon a document improperly filed by one of the defendants, to which the plaintiffs were not heard in objection. *Vencata Row and another* v. *Ragoonda Row.* 29th Aug. 1850. S. A. Decis. Mad. 65.—Thompson & Morehead.

68. A difference of opinion between the Judges of the Calcutta Court of Sudder Dewanny Adawlut, as to the true construction and meaning of the terms of a bond, led to a reference of the case to the Western Sudder Court, and the decision was passed according to the opinions of the majority of the two Courts. *Omesh Chundur Raee and others* v. *Bamun Das Mookerjee.* 23d Sept. 1850. S. D. A. Decis. Beng. 503.

69. When a sharer pays the Government revenue due by his co-sharers in order to save the estate from sale, the *onus* is not on the plaintiff to set forth the separate shares of the defendants. It is sufficient if he set forth his own share, and the amount payable and paid by him, his co-sharers being bound to shew the extent of their liabilities. *Kalidass Neoghee* v. *Syud Mohummud Shah Chowdhree and others.* 19th Dec. 1850. S. D. A. Decis. Beng. 583.—Dick, Barlow, & Colvin.

70. And if none of the defendants will discover the amount of their liabilities, the decree should be given against them all in equal portions payable by each. *Ibid.*

71. But upon proof being adduced by any co-sharer of the balance, if any, for which alone he is answerable, the decree should pass against such co-sharer for that amount only. *Ibid.*

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2. *What Law administered between parties.*

72. No local custom can be pleaded against the law as established by Regulation, Circular Order, and precedent. *Ruttun Monee and others* v. *Joogul Raee and others.* 7 S. D. A. Rep. 346.—Tucker, Barlow, & Hawkins.

73. If parties bring actions in the Company's Courts upon contracts effected according to the law of England, they must do so upon the understanding that such transactions will be judged and dealt with according to the rules of the Regulation law. *Bhuwanee Churn Mitr* v. *Jykishen Mitr.* 24th July 1847. 7 S. D. A. Rep. 362.—Tucker, Dick, & Hawkins.

74. Where a question as to the property in jewels given to a woman preliminary to her marriage with a man, she afterwards marrying another man, was decided by the Principal Assistant Commissioner of Durung, in Assam, according to the Hindú law, and the plaintiff, in his petition to the Sudder Dewanny

Adawlut, stated that such decision was contrary to the constant practice of the provinces of Assam; it was held, that evidence as to the practice should have been taken, and that the case should not have been decided upon a mere point of Hindú law, without its being recorded that the Hindú law is generally recognised in Assam as governing such cases. *Durp Raee* v. *Mohaja Bibi and others.* 4th May 1848. S. D. A. Decis Beng. 410.—Hawkins.

75. In a suit, for inheritance, between members of the Greek church, the Courts referred to the minister of such church for an exposition of the law. *Andrew Lucas* v. *Theodore Lucas and another.* 3d Aug. 1848. S. D. A. Decis. Beng. 735.—Tucker, Barlow, & Hawkins.

76. In a suit by a wife against her husband (both Armenian Christians) for property under the terms of an ante-nuptial contract, the contract was made the basis of the judgment, and the English law was held to be inapplicable to the case.[1] *Aratoon Harapiet Aratoon* v. *Catherina Aratoon.* 17th Aug. 1848. 7 S. D. A. Rep. 528.—Jackson.

77. In a claim for the right of pre-emption by the plaintiff, a Muhammadan, the defendants being Hindús; it was held, that, under Sec. 3. of Reg. VII. of 1832, the Muhammadan law could not be applied, the more especially since the defendants (the Hindús) objected to the application of the Muhammadan law to themselves. *Shah Muqbool Alum* v. *Ajoodheea Singh and others.* 28th May 1849. 4 Decis. N. W. P. 137. —Thompson, Begbie, & Lushington.

78. The house of *A*, a Hindú, adjoined the house of *B*, a Muhammadan. *B* having failed to induce *A* to let him have his house, sold his own, without *A*'s knowledge or consent, to *C*, a Hindú, whereupon *A* brought a suit against *B* and *C* for possession of the hôuse sold to *C* by right of pre-emption. The Judge decreed in favour of *A*. It was urged in special appeal, that, as *A* was a Hindú and *B* was a Muhammadan, the case should not have been tried by the law of either party, but according to the principles of equity and good conscience, under Sec. 9. of Reg. VII. of 1832. Held, that that Regulation did not apply, since it provides, that "whenever the parties are of different persuasions, the laws of those religions shall not be permitted to operate so as to deprive such parties of any property to which, but for the operation of such laws, they would have been entitled;" and in the present case the only party who lost any thing was *C*, who was of the same persuasion as the plaintiff. *Jowahir Lall and another* v. *Rai Kishoreram and another.* 28th Jan. 1850. 5 Decis. N. W. P. 21.—Tayler, Begbie, & Lushington.

79. No objection having been made to the application of the Muhammadan law of pre-emption, the Courts are not called upon *proprio motû* to refuse to administer such law to Hindús. *Ibid.*

80. Still less, in a case where the plaintiff is a Hindú, and the defendants a Hindú and a Musulmán respectively, can the Muhammadan defendant take an objection to the application of such law in special appeal. *Ibid.*

81. The Courts are not competent, even on waiver by the parties, to dispense with an express requisition of the law. *Nubeenchundur Mookerjee* v. *Ranee Jumoona Koonwary.* 27th Dec. 1849. S. D. A. Decis. Beng. 487.—Colvin.

82. The Hindú law was held to be applicable to *Játs.*[2] *Dabee Singh*

[1] See *supra* Tit. Husband and Wife, Pl. 9, note.

[2] In this case the Court observed—"that the custom of a particular family is a plea which the Civil Courts ordinarily recognise, and which those who assert it are allowed to prove by evidence; but

and others v. *Bujroo Singh and others.* 19th Sept. 1850. 5 Decis. N. W. P. 336.—Lushington.

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3. *Process.*

83. On a remand of a case in consequence of the property sued for being situated in different Zillahs, and no authority having been obtained from the Court for proceeding with the action *previously to issuing any process on the petition of plaint*, as required by paragraph 2 of Circular Order No. 29 of the 11th Jan. 1839, the Judge, after obtaining the authority of the Court, merely confirmed his former decision on the existing record, instead of issuing fresh process as on a new plaint. Held, that all proceedings previous to the receipt of the Court's authority were illegal, and that the Lower Court was bound to issue fresh process on the plaint, and to investigate the case *de novo* after being authorised to proceed in the suit. *Gobindmunee Chowdhrain* v. *Parbuttee Chowdhrain.* 12th March 1850. S. D. A. Decis. Beng. 41.—Barlow, Colvin, & Dunbar.

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4. *Parties.*

84. In an action for the recovery of property attached by an Ameen appointed by the Collector under instructions from the Civil Court, the plaintiff, in making the Collector a party to the suit, is liable to a nonsuit under the provisions of Sec. 28. of Reg. XI. of 1822. *Rajah Raj Gungadhur, Petitioner.* 5th Feb. 1835. 1 S. D. A. Sum. Cases, Pt. i. 6.—D. C. Smyth.

85. One joint owner of an estate may file a plaint on behalf of himself and all the others; and the others, if they choose to avail themselves of his act, will, without becoming parties on the record, obtain equal advantages with the actual plaintiff. *Soondernarain Bhoonya* v. *Bhurutchurn Sutputtee.* 30th Dec. 1844. 7 S. D. A. Rep. 187. —Gordon.

86. Where purchasers of lands were to obtain possession on their purchase, under the deed of sale, through a third party, who held the lands in *Patní* under the vendor, the *Zamíndár*; it was held, that the *Patnídár* was properly made a party to the suit against the vendor for possession. *Bhyro Chunder Moojumdar* v. *Kishun Soondur Goha Bukhsee and another.* 17th June 1845. S. D. A. Decis. Beng. 194. —Dick.

87. Plaintiff sued to recover possession of certain land. Defendant pleaded that the said land was included in his rent-free lands, which had been resumed by Government, and settled with him. Held, that there was no necessity to make Government a party to the suit. *Bhuwanee Shunker Chukerbutty* v. *Raja Jye Singh Deb and others.* 18th June 1845. S. D. A. Decis. Beng. 198.—Tucker, Reid, & Barlow.

88. Where *A* sued *C* to recover a sum of money alleged to have been advanced by him to *B*, *C*'s *Náib*, to pay *C*'s rents, and got decrees in both Courts; the Sudder Dewanny Adawlut held, that the heirs of *B* (he being dead) not having been made parties to the suit, the action would not lie against *C* alone, and should have been nonsuited. The case was therefore sent back, with instructions, in the event of *A* putting in a supplementary plaint against the heirs, to decide the case in their presence, otherwise to nonsuit *A*. *Gungapershad Bhanee and others* v. *Ishurchunder Mustofee.* 28th June 1845. S. D.A. Decis. Beng. 212.—Tucker, Reid, & Barlow.

89. In a suit for *Málikáneh* the Collector ought to be made a defen-

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that the custom of a whole race like that of the *Játs* must be determined by the law under which they live. The Court will not go into evidence upon it."

dant.[1] *Poknaraiun and others* v. *Goneish Dutt and others.* 4th March 1846. S. D. A. Decis. Beng. 93.—Barlow.

90. A plaintiff was nonsuited for making a deceased person a co-defendant. *Punchanun Raiee, Petitioner.* 24th March 1846. 1 S. D. A. Sum. Cases, Pt. ii. 80.

91. The error of making a deceased person a defendant can be corrected on the motion of the plaintiff.[2] *Beepur Das and others, Petitioners.* 21st Sept. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 119.—Hawkins.

92. In a suit ostensibly for damages for an indigo crop forcibly taken, but, in reality, to try the right to the land; it was held to be necessary to include the proprietors of the soil among the defendants. *Lyall* v. *Sheeb Chunder Ray and another.* 3d Sept. 1846. S. D. A. Decis. Beng. 325.—Tucker, Reid, & Barlow.

93. The lessor of a *Talook* should be included among the defendants in a suit for the under tenure created by him. *Rada Govind Nundee and others* v. *Hume.* 15th Sept. 1846. S. D. A. Decis. Beng, 359.—Tucker.

94. Where a lessee was ousted by a third party claiming the land under a lease from another *Zamíndár;* it was held, that he might sue such third party for redress, making his own lessor a defendant, but without making the *Zamíndár* of the third party a defendant. *Gunneish Raee* v. *Cruise and others.* 3d May 1847. S. D. A. Decis. Beng. 123.—Rattray, Dick, & Jackson.

95. If one of two partners, in whose favour a deed has been executed without specification of shares or interests, produce good and sufficient reason satisfactory to the Court, he may be allowed to sue alone; but if the proof of the necessity of suing alone, which the plaintiff is thus obliged to produce, or the claim itself, affect in any way the interests of the party who has refused to join in the suit, that party should be made a defendant, or the plaintiff is liable to be nonsuited. *Baboo Hurree Doss and another* v. *Ramjeewun Doss and others.* 4th May 1847. 2 Decis. N. W. P. 113.—Lushington. *Bhageeruth* v. *Bhugwan Doss.* 13th May 1847. 2 Decis. N.W.P. 135.—Tayler, Begbie, & Lushington.

96. A *Zamíndár,* in whose estate lands, the *Lákhiráj* title of which is disputed, are situate, should be made a party to the suit. *Purkhit Sircar and others* v. *Purmanund Rae and others.* 15th July 1847. 7 S. D. A. Rep. 353.—Hawkins.

97. A *Málguzárdár,* in whose estate lands, the *Lákhiráj* title of which is disputed, are situate, should be made a party to the suit. *Modoosoodun Lushkur* v. *Muddun Mohun Khan and others.* 20th May 1848. S. D. A. Decis. Beng. 164.—Hawkins. *Rajkomar Singh* v. *Radha Singh and another.* 19th Aug. 1847. S. D. A. Decis. Beng. 451.—Hawkins.

98. Where a man holding *Deowutter* lands from *A*, is forcibly compelled by *B* to give him a *Kabúliyat*, or attornment, in respect of the same lands, the tenant may sue *B* to set aside the *Kabúliyat* without making *A* a party. *Chaund Sarontal* v. *Dasee Munnee Dibbea and others.* 3d Aug. 1847. S. D. A. Decis. Beng. 393.—Hawkins.

99. Compliance with the motion of a defendant, without the consent of the plaintiff, discharging certain co-defendants, who were then converted into witnesses for the defence, was held to vitiate the proceedings, which were quashed, and the case remanded to be decided as preferred. *Shama Mohun Bose* v. *Ramnarain Mookerjee and others.* 7th Aug. 1847. 7 S. D. A. Rep. 377.—Tucker, Barlow, & Hawkins.

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[1] Reg. VIII. 1793, s. 44.

[2] In the previous Case of *Punchanun Raiee*, the plaintiff took no steps to rectify his error, therefore only an order of nonsuit could be passed.

100. If a party be made a defendant in a case with the fraudulent intent of preventing his becoming a witness, the plaintiff should be nonsuited. *Ramlochun Gho* v. *Gooroo Purshad Gho and others.* 11th Aug. 1847. 7 S. D. A. Rep. 380.—Dick, Jackson, & Hawkins.

101. But if a party be improperly made a defendant, without such fraudulent intent, the suit will be remanded, in order that such party's name may be struck out on the petition of the plaintiff, and thus an opportunity be given to the other defendants to call him as a witness. *Mt. Fukeerun* v. *Sheikh Moula Buksh and others.* 24th Dec. 1850. S. D. A. Decis. Beng. 597.—Dick, Barlow, & Colvin.

102. As a general rule, all the parties, in whose favour a deed is executed without specification of shares, are required to *join* in the *plaint;* but whenever a sufficient reason is given for suing separately, the plaintiff has a right to be heard. And where *A* and *B* had lent money on mortgage, "in halves," it was held that *A* was entitled to sue for his half of the mortgage money, singly and without making his sharer a defendant. *Banee Behadoor Singh and others* v. *Gosain Phoolgeer.* 17th Aug. 1847. 2 Decis. N. W. P. 269.—Tayler, Begbie, & Lushington.[1]

103. Plaintiffs sued the defendant for balances of rent from the year 1235 to 1247; the defendant purchased the property in 1242, and pleaded that he was answerable from that date only. Held, that the former proprietors, who were in possession previous to 1235 and up to 1242, should have been made co-defendants in the suit, and the claim of the plaintiffs was therefore rejected for want of parties. *Broderick* v. *Hurmohun Raee.* 11th Sept. 1847. S. D. A. Decis. Beng. 536.—Tucker, Barlow, & Hawkins.

104. A proprietor and a farmer, or *Thíkadár,* cannot be associated as plaintiffs in the same suit, the interests of the two being of a distinct nature, and not capable of being made the basis of the same action. *Purshun Oopudya and another* v. *Mt. Phooljaree and others.* 5th Jan. 1848. 3 Decis. N. W. P. 3.—Cartwright & Begbie. (Tayler dissent.)

105. The claimant of an estate in right of inheritance, suing to recover the amount of a decree due to such estate, is not required to include all the debtors to the estate in one suit; nor should he be referred to a regular suit to prove his title, if it be contested by a party claiming on a special ground. *Rumnee Dasee and others, Petitioners.* 20th Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 127.—Tucker, Barlow, & Hawkins.

106. Where the plaintiff sued for possession of land under a deed of sale, such land not being in the possession of the vendors, and the title of the vendors was disputed by the defendants, the parties in possession; it was held, that the vendors should have been made parties to the suit. *Mt. Ramma Bye* v. *Mt. Rebuttee and another.* 26th Jan. 1848. S. D. A. Decis. Beng. 31.—Hawkins & Currie. (Jackson dissent.)

107. *A* entrusted property to *B* the defendant, which not being forthcoming, the latter executed to *A* an engagement promising to pay him the value of it, and *A* subsequently sold the engagement to *C,* who sued *B* for the amount. Held, that *A* should have been made a party to such suit. *Bhunjun Mundul* v. *Gobra Mundul and others.* 17th Feb. 1848. S. D. A. Decis. Beng. 94.—Hawkins.

108. The creditor of a party cannot sue those who are liable to pay such party's debts or legacies, unless such party join in the plaint, or be included by the creditor as a de-

[1] See *supra,* Pl. 95; and see the case of *Mohamed Ali* v. *Shewa Singh.* Tit. Action, Pl. 28.

fendant in the suit. *Ramkishen Das and another* v. *Choonee Lal Mohunt.* 8th April 1848. S. D. A. Decis. Beng. 302.—Tucker, Barlow, & Hawkins.

109. An action for a *Mukaddamí Zamíndárí,* when both parties confess that the names of neither are recorded in the Collector's books as proprietors, will not lie without impleading the Government. *Chundun* v. *Premsookh.* 1st May 1848. 3 Decis. N. W. P. 129.—Cartwright.

110. A minor, in whose name a suit has been defended by his guardian, coming of age *pendente lite,* may petition the Court to be admitted a defendant. *Hurchurn Sookul* v. *Gunga Purshad and another.* 19th June 1848. S. D. A. Decis. Beng. 551.—Rattray and Jackson.

111. In a suit for the reversal of orders passed by the Criminal Courts under the provisions of Reg. XV. of 1824, all the parties to the proceedings in such Courts, or those upon whom the interests of such parties may have devolved, must be made parties. *Gooroo Das Raee and another* v. *Moonshee Mufeezooddeen and others.* 29th July 1848. S. D. A. Decis. Beng. 615.—Tucker, Barlow, & Hawkins.

112. An action by an intermediate holder of a *Hundí* for the recovery of its amount will lie, without including, as a defendant, the party on whom the *Hundí* is drawn. *Rungee Lall and another* v. *Ramgopal and others.* 16th Aug. 1848. 3 Decis. N.W. P. 284.—Cartwright.

113. In a claim against the estate of a minor, the official receiver of the estate was not included as a defendant, and the plaintiff was nonsuited, notwithstanding that the receiver appeared, *motu suo,* as an objector. *Receiver of the Supreme Court* v. *A. Ter Thaddeus Nekose.* 10th May 1849. S. D. A. Decis. Beng. 144. —Dick, Barlow, & Colvin.

114. Where a person claimed an estate as his inheritance under the Hindú law, on the ground that it had devolved upon him by the relinquishment of a nearer heir; it was held, that such nearer heir ought to have been a party defendant to the suit. *Deep Chund Sahoo and others* v. *Hurdeal Singh.* 14th June 1849. S. D. A. Decis. Beng. 204.—Dick, Barlow, & Colvin.

115. In an action where the plaintiffs claimed a right of property in lands of which, by the act of the *Talookdár,* who gave a *Potta* to the defendants, the plaintiffs had been dispossessed; it was held, that the *Talookdár* should have been made a party. *Wuzeer Moollah and others* v. *Shumsheer Ali and another.* 21st June 1849. S. D. A. Decis. Beng. 246.—Dick, Barlow, & Colvin.

116. *A* brought a suit against *B* and *D* to recover a sum of money due on a bond executed by *B,* the money being secured upon certain property entered in the bond. Subsequently to the bond, *B* and *C* mortgaged their estate, including the property in the bond, to *D.* Held, that it was not incumbent upon *A* to make *C* a defendant in the case.[1] *Jowahir Singh* v. *Hurjus Rai.* 6th Aug. 1849. 4 Decis. N. W. P. 271.—Thompson, Begbie, & Lushington.

117. The admission by a Moonsiff of a defendant on a supplemental plaint is irregular. *Muha Rajah Het Nurain Singh* v. *Lala Khurugjeet Singh.* 16th Aug. 1849. S. D.

[1] In this case *A* sued "to bring to sale the rights and interests of *B* by annulment of the mortgage deed." The Court remarked, that—"Had the plaintiff really sued *boná fide* to annul the deed of mortgage, the question might have arisen whether such annulment could have been decreed in regard to one only out of two mortgagors. It is true that the plaint is, to bring to sale certain rights and interest, 'by annulment' of the mortgage bond; but this is a form which may be understood to imply that the deed objected to is to be annulled so far as it may be inconsistent with, or hostile to, the claim of the plaintiffs."

A. Decis. Beng. 352.—Dick, Barlow, & Colvin.

118. But it does not vitiate a decree against other defendants. *Ibid.*

119. A proprietor of an estate, suing a party who puts in issue that the land claimed in the suit is held by him under a title from the proprietor of a neighbouring estate to which the land belongs, is bound to include the other proprietor as a defendant in the suit. *Kalee Sunker Chowdhree and others* v. *Hurnath Raee.* 16th April 1850. S. D. A. Decis. Beng. 111.—Barlow, Colvin, & Dunbar.

120. In a suit brought to cancel the sale of a *Patní Talook* on the ground of irregularity in the conduct of the sale by the Collector by whom it was made, it is necessary to make the Collector in question a defendant in the action. *Ram Kishoon Ghose* v. *Dwarkanath Dutt and another.* 7th May 1850. S. D. A. Decis. Beng. 179.—Dick, Jackson, & Colvin.

121. Held, in an action for libel, that it was improper to allow the confidential legal advisers of the principal defendant, from whom she received the information upon which the alleged libel was founded, to be made co-defendants in the suit, as they were privileged in giving her the information which had reached them. *Moulvee Abdool Khyr Mohummud Ali Khan* v. *Afran-o-Nissa and others.* 8th May 1850. S. D. A. Decis. Beng. 187.—Dick, Jackson, & Colvin.

122. Parties made defendants by direction of a Court, although not included among the defendants by the plaintiff, even by means of a supplemental plaint, are to be regarded as not included in the suit. *Raminder Nurain Raee Adhikaree* v. *Rajah Anundnath and another.* 4th June 1850. S. D. A. Decis. 256.—Barlow, Jackson, & Colvin.

123. Where a suit was brought for possession of certain lands with mutation of names; it was held, that the *Mustájir*, as the party in possession, was rightly made a defendant.[1] *Mohumed Kureemoollah* v. *Mt Poondhun and another.* 25th June 1850. 5 Decis. N. W. P. 130.—Begbie, Deane, & Brown.

124. Where there may be a doubt as to any *possible claim* by a surviving widow as the rightful heir, in the event of a disallowance of the succession of an alleged son to whom she had relinquished her right, and which succession is contested by a collateral heir, the widow should be made a defendant in the suit. *Bhyrub Chundur Chowdhree* v. *Kalee Kishwur Raee and others.* 3d Aug. 1850. S. D. A. Decis. Beng. 369.—Colvin.

125. A party claiming a *Jalkar* as belonging to *Mahâll A*, sued another party, who claimed it as belonging to *Mahâll B*, in which *Mahâll* there were other co-sharers with him. Held, that all the co-sharers must be made defendants. *Mohummud Zukee* v. *Lamb.* 5th Aug. 1850. S. D. A. Decis. Beng. 371.—Barlow & Dunbar. (Dick dissent).[2]

126. An issue as to a proprietary title in a claimant for rent requires that the party shewn to have an adverse title should be made a defendant. *Sheikh Goodur* v. *Sheikh Shuhamut Ali.* 12th Sept. 1850. S. D. A. Decis. Beng. 476.—Barlow, Jackson, & Colvin.

127. Where it seems that the plaintiff has omitted to implead a party who might be found liable for

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[1] The Court remarked in this case—"It might be a question whether the plaintiffs ought not to have made the Government, through whom the *Mustájir* derives his possessory title, a co-defendant with the *Mustájir*;" but the point was not touched upon in the certificate of Special Appeal.

[2] Mr. Dick dissented, on the ground that, as the plaintiff did not aver that he was dispossessed or otherwise injured by the other co-sharers, it was not necessary to include them as defendants.

the claim, the Court may direct the plaintiff to include such party by a supplemental bill. *Manick Singh* v. *Mendhee Singh*. 16th Sept. 1850. 5 Decis. N. W. P. 324.—Begbie, Lushington & Deane.

128. In a claim for a *Zamíndárí* right in certain lands which the defendants, holding as *Talookdárs*, stated to belong to the *Zamíndárí* of a third party, the plaintiff was nonsuited for not having made such third party a party to the suit. *Goorpersaud Raee* v. *Moulvee Abdool Ali and others*. 19th Sept. 1850. S. D. A. Decis. Beng. 491. —Barlow, Jackson, & Colvin.

129. A plaintiff, as lessor, suing to eject third parties who had derived their title from his lessees, on the ground that the latter had relinquished their tenure to him by a *Báz námeh*, must include the lessees as defendants. *Thakoor Sumbhoonath Sahee Deo* v. *Mendra Ohuddar and another*. 19th Sept. 1850. S. D. A. Decis. Beng. 493.—Barlow, Jackson, & Colvin.

130. *A*, admitting that he was cosharer with *B* in a parcel of land, sued *C* as having ousted him from his share, without including *B* as a defendant. Held, that such omission did not subject *A* to a nonsuit. *Ram Ruttun Raee and others* v. *Bindrabun Chundur Raee and others*. 24th Sept. 1850. S. D. A. Decis. Beng. 513.—Dick & Dunbar. (Barlow dissent.)

131. A plaintiff was nonsuited for defect of parties, a strong presumption being shewn, from the tenor of the plaint, and of the document on which it was founded, that a party, not made a defendant, had an interest in the subject-matter of the suit. *Ramnath Singh* v. *Ameer Ali and others*. 31st Dec. 1850. S. D. A. Decis. Beng. 610.—Dick, Barlow, & Colvin.

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5. *Representation.*

132. An objection having been made to the representation by the legal heirs of a plaintiff who died *pendente lite*, on the ground of a special legal disability, was overruled, and the objector referred to a regular suit. *Punchanun Roy, Petitioner*. 26th June 1835. 1 S. D. A. Sum. Cases, Pt. i. 9.—D. C. Smyth.

133. Held, that on applications by three distinct parties to represent a deceased decree-holder (one as the legal heir, and the others on special pleas), the Zillah Court should have recognised the legal heir, leaving the other claimants to resort to regular actions for the establishment of their respective claims. *Piarmonee Debbea and another, Petitioners*. 27th Sept. 1836. 1 S. D. A. Sum. Cases, Pt. i. 12.—D. C. Smyth.

134. Where there is any reasonable doubt as to the right of a party who claims as heir, he must produce a certificate of heirdom under Act XX. of 1841. *Secretary of the Agra Bank* v. *Reade*. 12th Sept. 1844. 3 Decis. N. W. P. 303.—Tayler, Thompson, & Davidson.

135. And a plaintiff was nonsuited for not having produced such a certificate, although the objection had not been taken in the Lower Court. —*Ibid.*

136. But the Court must be satisfied that the party, urging the necessity of such a certificate, was, according to the terms of the law, actuated by reasonable doubt as to the party entitled, and not by fraudulent and vexatious motives. *Ibid.* *Bujawun Rai* v. *Sheosuhai Rai and others*. 30th Aug. 1848. 3 Decis. N. W. P. 301.—Thompson.

136*a*. Heirs are incompetent to sue when their claim, *as heirs*, is disputed by other parties, without having taken out a certificate of heirdom as prescribed by Act XX. of 1841. *Thakoor Dyal Tewaree* v. *Bhoop Singh and another*. 9th March 1847. 2 Decis. N. W. P. 58.—Tayler, Thompson, & Cartwright.

137. A claim founded on adoption having been adjusted between the claimant and the heirs at law of the alleged adoptive father by a partition of the estate of the latter, such adoption not having been legally proved in Court; it was held, that, on the death of the claimant, the heirs of the adoptive father should be admitted to represent the adopted party, in a suit instituted against him by another party with reference to the property thus obtained, in preference to his own mother. *Radha Madhub Rae, Petitioner*. 21st June 1847. 1 S. D. A. Sum. Cases, Pt. ii. 105.—Hawkins.

138. An *Ism Farzí* having brought a suit for possession of a farm, and dying *pendente lite*, the actual owner of the lease cannot be allowed to proceed with the suit on the ground of his ownership, as, by the practice of the Courts, it is only the heir or representative of the plaintiff who can succeed to the right of carrying it on on the plaintiff's death. *Gunga Geer* v. *Rajah Jugut Bahadoor Singh*. 26th July 1847. 2 Decis. N. W. P. 218.—Tayler, Begbie, & Lushington.

139. A plaintiff transmitting by sale and purchase a right in litigation to another, such other stands in his place, and is admitted to prosecute the suit, or defend any appeal, instead of the original plaintiff. *Mt. Jysree Kowur and others* v. *Mt. Surja Kowur and others*. 24th Nov. 1847. S. D. A. Decis. Beng. 609.—Rattray.

140. The purchaser of the rights and interests of an original plaintiff has full right to represent the latter. *Kunhoochurn Mytee* v. *Muddun Pundeh and others*. 20th April 1848. S. D. A. Decis. Beng. 346.—Jackson, Hawkins, & Currie.

141. Where the lands claimed by the plaintiffs were sued for in a former case, and, in execution of the decree, were adjudged to the present defendants, and the present plaintiffs purchased the right and title of the former proprietors, who were defendants in the former suit; it was held, that they stood in their places, and their claim was inadmissible. *Bhugwan Chundur Singh and others* v. *Ram Nurain Mookerjee and others*. 26th April 1848. S. D. A. Decis. Beng. 371. — Dick, Jackson, & Hawkins.

142. Proceedings under Act XIX. of 1841 were not allowed to supersede a plaintiff, admitted, in room of the original claimant, by the Court before which the case was pending. *Bissessur Sookhool* v. *Radhanath Lahoree*. 27th March 1849. S. D. A. Decis. Beng. 77.—Dick, Barlow, & Jackson.

143. The personal attendance in Court of the principal to execute the engagemement prior to the grant of a certificate of representative title under Act XX. of 1841 is unnecessary: the applicant, if unable to attend, may execute the deed in question by an authorized agent, or before a commission issued to attest its execution. *Birm Mye Goopteea and another, Petitioners*. 17th Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 124.—Court at large.

144. A party succeeding another in a suit can only come in on the pleas originally urged, and he cannot alter the plaint. *Chundur Mohun Mookerjee* v. *Sreeram Chundur Mookerjee*. 12th Dec. 1849. S. D. A. Decis. Beng. 445. — Barlow, Colvin, & Dunbar.

144*a*. *A*, the widow of *B*, brought a suit on a bond in her name. While the suit was pleading, she died, and her son *C* was admitted, as heir, to carry it on. *D*, the widow of *E*, the deceased brother of *C* (who was survived by his mother *A*), claimed a half share in the property of *A*, and, consequently, to be admitted to carry on the suit jointly with *C*. *D*'s application was refused by the Court on the ground, that as *E* died in his mother's lifetime, *D* had no claim to any portion of his mother's estate, and that the bond on which

the suit was brought was in *A's* name only, and not in that of the family.[1] *Dakheena Debia, Petitioner.* 8th Aug. 1850. 2 Sev. Cases, 595.—Jackson.

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6. *Third Party.*

145. Where *A* sued *B* and others for land and mesne profits, and *C* presented a petition claiming rights as against both parties, *C's* petition was rejected on the ground that the decree to be pronounced could only affect the parties to the suit. *Tara Chand Buttacharje* v. *Ramjye Dutt and others.* 19th April 1845. 7 S. D. A. Rep. 202.—Reid.

146. *A* sued *B* to foreclose a mortgage. *B* declared himself to be merely the *Farzí* of *C* and another. *C* intervened, but the Principal Sudder Ameen decreed a foreclosure, without allowing *C* to defend the suit, and his decree was affirmed by the Judge. Held, on special appeal, that *C* ought to have been admitted as a defendant, and the case was accordingly sent back for re-trial. *Wise* v. *Rubee Lochun Doss.* 29th Nov. 1845. S. D. A. Decis. Beng. 448.—Tucker & Barlow. (Reid dissent.)[2]

147. In a suit for inheritance the rights of other claimants, not parties to the suit, should be investigated under Sec. 13. of Reg. III. of 1793.[3] *Durbmoee Dasi* v. *Takoordoss Sein and others.* 23d Feb. 1847. S. D. A. Decis. Beng. 59.—Tucker.

148. Applications of objectors, or *Uzardárs*, in regular suits, should be received as miscellaneous petitions, and treated as such, and appended to the record of the case, in order that the *Uzardár* may not be supposed to have admitted, even tacitly, the point at issue. *Bhageeruth* v. *Bhugwan Doss.* 13th May 1847. 2 Decis. N. W. P. 135.—Tayler, Begbie, & Lushington.

149. It is not competent to a Judge to receive an appeal from a third party.[4] *Ibid. Gunga Bishun and others* v. *Salik Ram.* 9th Aug. 1847. 2 Decis. N. W. P. 242.—Tayler, Begbie, & Lushington. *Bhujjun Lall and another* v. *Maxwell.* 29th Dec. 1847. 2 Decis. N. W. P. 387.—Tayler, Cartwright, & Begbie.

150. The claim of a third party was rejected because it had not been preferred in the Lower Court. *Kullundur Ali Khan* v. *Mt. Kungul Bibi.* 3d Jan. 1848. S. D. A. Decis. Beng. 1.—Rattray, Dick, & Jackson.

151. Objections by a third party, to his lands being included by an order of Court in lands the subject of a suit between two other parties, should be preferred in a regular ap-

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[1] The Court remarked, that, to prove her right, *D* should first have established that the bond was on account of the whole family, and that she had a right to adopt a son under a power from her late husband, and that, even then, her rights admitted of doubt. The Court added that she might, however, sue *C*, and, pending her suit, apply for an injunction of Court to prevent him from prejudicing her right in the property.

[2] Mr. Reid thought, that, as *C* and his partner confessed to have made over their property to *B* to defraud their creditors, *C* had no right to defend the suit.

[3] And see the case of *Kaleepershaud Roy and others* v. *Degumber Roy.* 2 S. D. A. Rep. 237.

[4] This point was formerly brought under the consideration of the Sudder Dewanny Adawlut, N. W. P., on the occasion of a reference from the Calcutta Court. The Court of the Western Provinces maintained, that under no circumstances could an appeal be preferred by a third party. The Calcutta Court upheld the practice, that, when the matter at issue in the two Courts was the same, an appeal would lie. In every other case, they declared it should be rejected. Appeals from third parties have been admitted by the Courts where the decretal order has been supposed to affect them. See *Baboo Ram Doss* v. *Raja Run Buhadoor Sahee,* 4 S. D. A. Rep. 15; *Mt. Soorja Koonwur* v. *Dooshi Dowun Singh,* 7 S. D. A. Rep. 33; *Chedee Lal* v. *Baboo Kishen Pershad.* 7 S. D. A. Rep. 52. And see *supra* Tit. APPEAL, Pl. 61 *c*, 62.

peal from the final decree, and not summarily, as from an interlocutory order. *Ram Gopal Soorma and others, Petitioners.* 24th April 1848. 1 S. D. A. Sum. Cases, Pt. ii. 139. —Hawkins.

152. *A* sued *B* on a bond: *C* came in as a third party, and alleged that he had really advanced the money, and that *A* was merely a trustee for him. The Court refused to listen to *C*, and held, that the decree must pass, as between *A* and *B*, and that *C* must bring a separate suit. *Bulram Seïn* v. *Hurree Churn Shah.* 26th April 1848. S. D. A. Decis. Beng. 368.—Jackson & Hawkins.

153. But if an *Uzardár* be made a party to the suit by the Lower Court, however improperly, he has clearly a right to appeal. *Nurunjun Singh* v. *Chutturdharee Singh.* 22d July 1848. 3 Decis. N. W. P. 231.—Thompson.

153*a*. Claims to property sold in execution of a decree of a Civil Court, if not preferred before the sale within thirty days of the proclamation, cannot be entertained summarily after the sale, merely because preferred within one month thenceforward. *Mooteelal, Petitioner.* 12th June 1848. 2 Sev. Cases, 393. —Hawkins.

154. No decree can be given against an *Uzardár*. *Gholam Nubbee and others* v. *Sydun Beebee and another.* 27th Dec. 1848. 3 Decis. N. W. P. 423.—Tayler.

155. If *A* claim property from *B*, and the Judge come to the conclusion that *C*, a stranger to the suit, has a better title than either to the property; still his duty is limited to the adjudication of the claim before him, and he must not adjudge the property to *C*, until *C* has brought a direct suit against the parties in possession. *Mohun Lal* v. *Lahoor Singh.* 10th May 1849. S. D. A. Decis. Beng. 142.—Barlow & Colvin.

156. Where *A* sues *B* for exacting from him excessive rent, the Court cannot adjudicate upon a claim of *C* to be real holder of the land, which is stated in the pleadings to belong to the tenure for which the rent was taken. *Muddun Mohun Dey* v. *Kishen Soonder Das.* 16th Aug. 1849. S. D. A. Decis. Beng. 349.—Dick, Barlow, & Colvin.

157. A plaintiff had been nonsuited on account of some informalities, and renewed his suit *in formâ pauperis.* After the pleadings were completed, a petition was filed by *Uzardárs* to the effect that they, having purchased the decree of the defendants in the original nonsuited case, caused to be advertised for sale, and had themselves purchased, the *claim* of the plaintiff in the *renewed* suit. Held, that such a sale does not entitle the auction purchaser to supplant the plaintiff in Court, and deprive him of an adjudication of his claim. *Rumzan Ali* v. *Sheikh Noor Ahmud and others.* 25th Sept. 1850. 5 Decis. N. W. P. 376.—Begbie, Lushington, & Deane.

158. It is irregular to dismiss a claim on the petition of a third party. *Ibid.*

159. In a suit on a mortgage bond, the title of a third party, founded on prior purchase, should be determined before the property be declared liable to be taken in execution. *Huradhun Bagchee* v. *Mt. Ullung Bewah.* 17th Dec. 1850. S. D. A. Decis. Beng. 573.—Tucker & Jackson.

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7. *Subpœna.*

160. The shewing of a subpœna to a witness while passing by on an elephant was held to be a personal and actual service. *Tarnee Debbea, Petitioner.* 3d Nov. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 87.— Reid.

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8. *Proclamation.*

161. Cl. 4. of Sec. 6. of Reg. V. of 1831, which enacts that "in suits for succession or inheritance," pro-

clamation should be made calling upon all claimants to come forward, does not apply to suits to establish a transfer of property. *Nurunjun Singh* v. *Chutturdharee Singh*. 22d July 1848. 3 Decis. N. W. P. 231. —Thompson.

162. It is proper for the Courts to fix a further time, after the appearance of a defendant, for delivery of his answer, when he appears within the terms of a proclamation, in like manner as is expressly required by Sec. 5. of Reg. IV. of 1793, if he appear within the term of the first summons or notice. *Parbutty Dibbea* v. *Kishen Munnee Dibbea and another*. 18th March 1850. S. D. A. Decis. Beng. 56.—Barlow, Colvin, & Dunbar.

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9. *Plaint.*[1]

163. Omission to include the whole of a claim in one plaint, under the rules of the Circular Order of the 11th Jan. 1839, does not necessarily subject the plaintiff to a nonsuit, and the action must be tried on its merits. *Bhola Nath Baboo, Petitioner*. 20th June 1842. 1 S. D. A. Sum. Cases. Pt. ii. 33.—Reid. *Rajkishen Shah and others* v. *Mt. Dhunmunny Dassee*. 17th June 1845. S. D. A. Decis. Beng. 196. —Gordon.

164. Where the plaintiff sued the defendants (*Patnídárs*) for the value of an indigo crop cut and carried off by the latter, and neglected to specify in his plaint the boundary of the lands from which the indigo had been cut and carried off, his suit was dismissed with costs. *Lyall* v. *Sheeb Churn Ray and another*. 3d Sept. 1846. S. D. A. Decis. Beng. 329. —Barlow.

165. A plaintiff is liable to a nonsuit if he do not state explicitly, in his petition of plaint, the nature of his claim, and the individuals whom he considers responsible for his satisfaction; and, before instituting his suit, it is incumbent upon him to make such inquiry as may enable him so to do. *Moulvee Wahajooddeen and another* v. *Hurnarain*. 25th Nov. 1846. 1 Decis. N.W.P. 206.—Thompson, Cartwright, & Begbie.

166. Where the plaint alleged that the plaintiff had been "dispossessed," whereas it was clear, from his own statement, that he had never been in possession; it was held not to be a sufficient ground for a nonsuit. *Thakoor Doss Shah* v. *Harradhun Manjee and others*. 26th Jan. 1847. S. D. A. Decis. Beng. 26.— Tucker.

167. The Lower Courts having dismissed a suit, because a statement in the plaint did not tally with that made in a petition preferred before the criminal authorities, the Sudder Dewanny Adawlut overruled the objection. *Bhyrob Chundur Chowdhree* v. *Tarnikaunth Lahoree and others*. 12th Aug. 1847. S. D. A. Decis. Beng. 424.—Hawkins.

168. A Sudder Ameen is not competent to receive an amended plaint. *Pohop Singh* v. *Purusram*. 20th Sept. 1847. 2 Decis. N. W. P. 345.—Tayler.

169. A plaintiff is not *necessarily* liable to a nonsuit where he has omitted to designate the tenure under which the land sued for was held, provided he has sufficiently indicated the lands claimed, and there is no reason to fear difficulty in executing any decree which may be passed.[2]

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[1] And see Tit. ACTION, 163 and note. 170, 171.

[2] The Circular Order of the 24th June 1842, which requires that "every plaint shall contain a distinct and specific statement of the nature of the claim preferred," has been modified by the Circular Order of the 3d Aug. 1847, in which allusion is made to a "very general impression that the rules imperatively attach the penalty of nonsuit to an omission on the part of the plaintiff," to observe *one* particular of the rules laid down; and the impression is treated as erroneous.

Poorun Singh v. *Mohkum Singh and others*. 23d Aug. 1847. 2 Decis. N. W. P. 282.—Tayler, Begbie, & Lushington. *Mt. Sheo Koonwur* v. *Bishesshur Dial and others*. 25th Sept. 1847. 2 Decis. N. W. P. 349.—Lushington.

170. The non-specification of the exact date of dispossession (the time of dispossession being distinctly stated) does not constitute a sufficient ground for a nonsuit. *Debee Dehul and others* v. *Judobeer Singh and another*. 9th March 1848. 3 Decis. N. W. P. 77.—Tayler.

171. Where a repugnancy appears on the face of the plaint, the plaintiff must be nonsuited, whether the defendant insists on the repugnancy or not. *Beejayah Dibah Chowdhrain and another* v. *Shama Soondree Dibah Chowdhrain*. 10th Aug. 1848. S. D. A. Decis. Beng. 762.—Tucker & Hawkins. (Barlow dissent.)[1]

172. A plea of relinquishment by the legal heir, of his right of inheritance, in favour of a collateral heir, must be set forth in the plaint of the latter suing for the property relinquished, and the former must be made a defendant. *Deep Chund Sahoo and others* v. *Hurdeal Singh*. 14th June 1849. S. D. A. Decis. Beng. 204.—Dick, Barlow, & Colvin.

173. Where a party desires to regain possession of land of which he has been dispossessed, and to recover the value of the produce, he must sue expressly for possession, as well as for the value of the produce, and not for the latter only in the expectation of obtaining indirectly a decree for the former. *Wuzeer Moollah and others* v. *Shumsheer Ali and another*. 21st June 1849. S. D. A. Decis. Beng. 246.—Dick, Barlow, & Colvin.

174. A plaintiff was nonsuited by the Lower Appellate Court, on the ground that his suit was for two things;—first, to set aside a summary decree by a Collector; and secondly, to fix the rent payable by him *permanently*; whereas the stamp was only sufficient to cover the first claim. Held, that the order was improper, as neither the plaint, nor the order of the Court of first instance, referred to more than the settlement of the rent due for the year on account of which the summary decree had passed. *Gooroodas Biswas* v. *Hurnath Raee and others*. 23d May 1850. S. D. A. Decis. Beng. 220.—Dick, Jackson, & Colvin.

175. A plaintiff stated distinctly in his plaint, that *he had been adopted at the time* (هنگام) *of his birth*. On its being pleaded in answer that an adoption could not, under the Hindú law, be made until twenty-one days after birth, the plaintiff in his reply varied his original statement, by saying, that what was done at near the time of birth was only a making over the child to be brought up by the adoptive father, and that the actual adoption was not made till during the fifth year after birth. All the evidence was in support of the latter allegation. Held, that, as the proofs and reasonings were directly inconsistent with the statements of the plaint, the plaint must be dismissed. *Debee Dutt Tewaree and another* v. *Jhubboo Dutt Tewaree*. 18th June 1850. S. D. A. Decis. Beng. 306.—Barlow & Colvin. (Jackson dissent.)

176. If a suit be brought *only* to contest a summary order, dismissing a claim for rent, the one point—Is such, order just or not?—will be decided by the Civil Courts. *Sheikh Goodur* v. *Sheikh Shuhamut Ali*. 12th Sept. 1850. S. D. A. Decis. Beng. 476.—Jackson & Colvin. (Barlow dissent.)

177. But if, in addition to contesting the summary order, the plaint

[1] Sir R. Barlow remarked in this case—"Of the plaint itself, I would observe that I see no reason why a circumstance incidentally introduced into it, and upon which no decision was sought, should bar the Court's judgment on a point on which it was sought."

also *urge a claim to rent generally*, then the decision of such point will be governed *solely* by the farming engagements* actually interchanged. *Ibid.*—Barlow, Jackson, & Colvin.

178. *A*, admitting that he was only a half sharer with *B* in a parcel of land, sued *C* for having ousted him from his share. In his plaint he only defined the boundaries of the whole parcel, not of the half share which he *alone* claimed by his suit. Held, that such omission in his plaint was not sufficient ground for a nonsuit. *Ram Ruttun Raee and others* v. *Bindrabun Chundur Raee and others.* 24th Sept. 1850. S. D. A. Decis. Beng. 513.—Dick & Dunbar. (Barlow dissent.)

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10. *Supplement.*

179. The filing of a second supplementary plaint, although unauthorised by law, is no ground of nonsuit. *Bishen Soonduree Dibea, Petitioner.* 21st April 1845. 1 S. D. A. Sum. Cases, Pt. ii. 67.—Reid.

180. The filing of more than one supplemental plaint, though in obedience to an order of Court, renders the plaintiff liable to a nonsuit, the Courts not having the power to order the filing of a supplemental plaint. *Ajeet Singh* v. *Rajah Rughonath Singh.* 23d March 1847. 2 Decis. N. W. P. 65.—Tayler, Thompson, & Cartwright. *Mt. Hukeem-oon-Nissa* v. *Saunders.* 24th July 1848. 3 Decis. N. W. P. 234.—Thompson & Cartwright.

181. Sudder Ameens are not competent to receive a supplemental plaint. *Pohop Singh* v. *Purusram.* 20th Sept. 1847. 2 Decis. N. W. P. 345.—Tayler. *Donald* v. *Peetum Rae* 15th May 1848. 3 Decis. N. W. P. 157.—Tayler, Thompson, & Cartwright. *Butchwa* v. *Teij Pal.* 16th Aug. 1848. 3 Decis. N. W. P. 286.—Cartwright.

182. But where, after such irregular admission of a supplementary plaint, the Sudder Ameen had dismissed the claim *in toto*, and the Principal Sudder Ameen gave a decision in the plaintiff's favour upon his amended claim, as set forth in the inadmissible supplementary plaint; it was held only to be necessary to reverse that decision, and to remand the case to him for trial, without reference to the supplementary plaint. *Butchwa* v. *Teij Pal.* 16th Aug. 1848. 3 Decis. N. W. P. 286.—Cartwright.

183. Held, overruling the decisions in the above cases (Pl. 181, 182), that although Cl. 3. of Sect. 25. of Reg. XXIII. of 1814 prohibits Moonsiffs from receiving supplemental plaints, and Sec. 73. of Reg. XXIII. of 1814 declares the provisions of Cl. 4. of Sec. 25. to be equally applicable to suits tried by Sudder Ameens and Moonsiffs, yet Sec. 75. does not apply to Sudder Ameens the provisions of Cl. 3. of Sec. 25., the prohibitions therein laid down being confined to the Courts of the Moonsiffs only; and moreover, that as Sec. 74. of Reg. XXIII. of 1814 declares, that "in points not expressly provided for by the foregoing rules, the Sudder Ameens shall observe, as nearly as may be practicable, the rules prescribed in the Regulations for the guidance of the Zillah and City Courts in the trial and decision of original civil suits;" consequently it is apparent that Principal Sudder Ameens *may* receive supplemental plaints, and that the interdiction extends to only one class of Courts, viz. those of the Moonsiffs.[1] *Gholam Khadir Khan and others* v. *Jowahir Singh.* 29th

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[1] A similar interpretation of the law had been previously made by an order of a Judge of the Sudder Dewanny Adawlut (one of those who took part in the previous erroneous decision in the case of *Butchwa* v. *Teij Pal*), dated the 10th Jan. 1849. The Court observed, with regard to the previous erroneous decisions—"It is not important, if it were practicable, to dis-

June 1850. 5 Decis. N. W. P. 151. —Begbie, Deane, & Brown.

184. A Civil Court cannot, *motu suo*, order supplemental pleadings to be filed: they are admissible only on the application of the party seeking to rectify his error.[1] *Brijnath Sein, Petitioner*. 21st Sept. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 119.—Hawkins.

185. By Sec. 5. of Reg. IV. of 1793, a supplemental plaint may be admitted to supply an omission; but where the plaintiff claimed the female defendant as his wife, stating that he had married her in 1241 B. S., and she asserted that she was married to the male defendant in the month of Poos 1239, and the plaintiff afterwards put in a supplemental plaint, alleging that he had made a mistake, and that, in fact, his marriage took place in Kartik 1239; it was held, that such supplemental plaint was inadmissible, and the plaintiff should be nonsuited. *Eusuff* v. *Mohummud Ghazee*. 12th Feb. 1848. S. D. A. Decis. Beng. 77. — Tucker, Hawkins, & Currie.

186. Where a party instituted a suit in his own name for the recovery of certain property, which he declared was his own, but which, in fact, had been made over by him to his wife and family; it was held, that he was liable to a nonsuit, and could not be permitted to file a supplemental plaint to correct the error in the original plaint. *Pyagdutt* v. *Baboon*. 24th March 1849. 4 Decis. N. W. P. 52.—Tayler, Thompson, & Cartwright.

187. A plaintiff is liable to a nonsuit if there be contradiction between the plaint and supplemental plaint. *Ram Munee Dassee* v. *Ras Mohun Das Chowdhree*. 10th May 1848. S. D. A. Decis. Beng. 430.—Dick, Jackson, & Hawkins.

188. Under Reg. XXIII. of 1814, a Moonsiff cannot receive a supplemental plaint. *Thakoor Kunaiha* v. *Rajah Dobraj Singh and others*. 21st June 1848. S. D. A. Decis. Beng. 565.—Tucker & Hawkins.

189. Where the plaintiff did not give the extent or boundaries of the land sued for, and neglected to apply for permission to supply the omission by a supplementary plaint, he was nonsuited as of course. *Ranee Preea Dassee and another* v. *Chundernath Dutt and others*. 29th June 1848. S. D. A. Decis. Beng. 613. —Tucker, Barlow, & Hawkins.

190. Under Construction No. 1363, no *second* supplementary plaint is admissible, and the dictation of the Judge, in regard to any, is prohibited.[2] *Boondee Jha and another* v. *Casserat*. 26th July 1849. S. D. A. Decis. Beng. 304.—Dick, Barlow, & Colvin.

191. It is illegal to admit a supplemental plaint *after* the close of the regular pleadings. *Kishen Jeebun Bukshee* v. *Dunlop & Co.* 4th Dec. 1849. S. D. A. Decis. Beng. 431 *h*.—Barlow, Colvin, & Dunbar.

192. A supplemental plaint, by which the venue of an appeal was changed, was declared to be illegal. *Ibid.*

193. An illegal supplemental plaint cannot be withdrawn so as to avoid a nonsuit. *Ibid.*

194. A petition to correct what is *an evident error* in the pleadings should be received by the Court, and cannot be held a supplement under Sec. 5. of Reg. IV. of 1793; but such a petition should not be put upon the record, unless the Court, upon duly considering it, as soon as convenient after its being presented, passes an order for its admission, upon clear and satisfactory proof that

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cover in what way the mistake arose; it is sufficient to remark that, from the precedent founded by one erroneous decision, other decisions naturally flowed."

[1] Construction No. 1363.

[2] See *supra*, Pl. 180. 184.

the error arose merely from mistake or inadvertence. *Kaleekaunth Lahoree* v. *Kirpomayee Dibbea.* 16th April 1850. S. D. A. Decis. Beng. 113.—Court at large.

195. And it was held, that, under the circumstances of the case, a petition desiring to effect a material alteration in the date of a document, as set forth in the plaint, could not be admitted under the above rule, declared by the Court at large, as a petition to correct an *evident error arising merely from inadvertence. Ibid.*—Barlow, Colvin, & Dunbar.

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11. *Answer.*

196. Reasons preferred by a defendant for the dismissal of a regular suit cannot be urged in a miscellaneous petition, but should be contained in the answer to the plaint. *Raiee Hurree Kishen, Petitioner.* 3d Feb. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 63.—Reid.

197. An answer filed by the *Vakîl* of a defendant in a suit, himself absconding, or not furnishing security under Reg. II. of 1806, is not to be attended to. *Arratoon, Petitioner.* 5th May 1845. 1 S. D. A. Sum. Cases, Pt. ii. 68.—Reid.

198. If Government be a co-defendant in a suit, the plaintiff need not, after filing the plaint, take any steps in prosecution of the case till the answer of Government be given in. *Mt. Emam Bandee, Petitioner.* 24th Nov. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 72.—Rattray, Tucker, Reid, & Dick.

199. It is irregular for a Principal Sudder Ameen to admit an answer from a defendant after default, and order for *ex-parte* trial, without satisfactory reasons being assigned for the default.[1] *Mt. Birjshurree* v. *Govind Kishoon Shah and others.* 20th Dec. 1848. S. D. A. Decis. Beng. 881.—Dick.

200. But if he should so admit it, he is bound to proceed in conformity with Cl. 3. of Sec. 12. of Reg. XXVI. of 1814, and to fine the defendant in the first instance, and allow another period for filing documents and names of witnesses. *Ibid.*

201. An answer not having been filed in person, or by a *Vakîl*, the decisions founded thereon were declared to be inoperative. *Ubhoy Churn Pandah* v. *Gobind Ram Bearer.* 28th March 1849. S. D. A. Decis. Beng. 78.—Jackson.

202. An answer is admissible, if filed before evidence is taken to the plaintiff's averments, notwithstanding the defendant may have neglected to appear within the time limited in the notice calling on him to answer. *Dunlop and others* v. *Issur Chundur Gungolee and others.* 1st Nov. 1849. S. D. A. Decis. Beng. 417.—Jackson.

203. If the plaintiff raise no objection, the answer of an attorney of the defendant is admissible. *Surbanee Dassee and others* v. *Ramruttun Raee.* 31st Dec. 1849. S. D. A. Decis. Beng. 491.—Colvin.

204. Under Construction No. 375, a Moonsiff cannot admit a defendant's answer after the commencement of an *ex-parte* investigation, without first calling upon him to explain the cause of his delay in appearing.[2] *Behareelall* v. *Hukeem Mohummud Ali and others.* 13th Aug. 1850. S. D. A. Decis. Beng. 399.—Jackson & Colvin.

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12. *Replication.*

205. In the event of two or more defendants filing their answers to an action separately, the plaintiff, unless he obtain permission to the contrary, must reply to each within six weeks from the date of its presentation; otherwise he will incur the penalty of default. *Bunwaree Lall, Petitioner.* 22d Sept. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 71.—Reid.

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[1] See Construction No. 375.

[2] See *supra*, Pl. 199, 200.

206. It is unnecessary to reply to a defendant answering in confession of judgment. *Shama Soonduree, Petitioner.* 15th June 1846. 1 S. D. A. Sum. Cases, Pt. ii. 80.—Reid.

207. If the plaintiff's reply be not filed before the expiration of the six weeks allowed, the case itself becomes defunct under Sect. 1. of Act XXIX. of 1841. *Khullub Sahoo* v. *Baboo Lall Das and another.* 15th Feb. 1847. S. D. A. Decis. Beng. 55.—Tucker.

208. Where the plaintiffs first brought their suit for a share in certain "hereditary" property, and subsequently, in their replication, changed the nature of their claim to a share in property which had been purchased by them, they were nonsuited with costs. *Sheochurn Koar and others* v. *Devedial Koar and others.* 16th May 1849. 4 Decis. N. W. P. 125.—Thompson & Begbie. (Lushington dissent.)

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13. *Trial.*

209. Plaintiffs having obtained a decree against *A*, the estate of the latter was sold in satisfaction thereof to the plaintiffs, who obtained possession. The defendant ousted them, claiming an interest paramount to theirs, *A* having previously mortgaged the estate to him. In the Court of first instance the mortgagee's claim was fully recognised; but the Principal Sudder Ameen, without pronouncing definitively on their rights, on which the defence was founded, and without inquiry into their validity, decreed in favour of plaintiffs, assigning as his reason for so doing that the mortgagee's rights were not reserved when the sale was made in execution of the decree against *A*. Held, on special appeal, that the case was decided on insufficient grounds by the Principal Sudder Ameen, inasmuch as he was bound to try and pronounce judgment upon the rights of the party alleging himself to be mortgagee. The case was referred back accordingly. *Keerut Sing* v. *Omadhur Bhut and others.* 17th Feb. 1845. S. D. A. Decis. Beng. 24.—Rattray, Barlow, & Gordon.

210. Where a suit was brought with the express permission of four Judges of the Sudder Dewanny Adawlut; it was held, that no objection could be raised against hearing and trying it on its merits. *Mahmood Ahmed Chowdry and another* v. *Obye Churn Banerjee.* 19th Aug. 1846. S. D. A. Decis. Beng. 315.—Reid, Dick, & Jackson.

210*a*. In a suit where part of a claim may be barred by the rules of limitation, the remaining portion may be proceeded on, according to practice and precedent, for trial and determination by the Lower Court, conformably with the Regulations in force.[1] *Krishnkumar Moytro, Petitioner.* 3d Jan. 1849. 2 Sev. Cases, 453.—Hawkins.

211. Where the plaintiff sues on a special ground—a deed giving power to adopt for instance—the Judge should confine himself to the investigation of that point only, and, on its not being established, he should dismiss the suit, and not decree any portion of the property in litigation on a ground different from that on which the claim was preferred. *Kummul Munnee Dibbea* v. *Kishen Munnee Dibbea.* 12th July 1849. S. D. A. Decis. Beng. 286.—Dick, Barlow, & Colvin.

212. A mere intimation, or direction, in a decretal order, as to the circumstances under which a particular suit may be instituted, is of no binding effect in the decision of such suit. *Zeinut Begum* v. *Bheekun Lal and others.* 12th Sept. 1849. S. D. A. Decis. Beng. 392.—Dick, Barlow, & Colvin.

213. A plaintiff having put exclu-

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[1] See the case of *Ruttun Munnee Dasseea and others* v. *Shunkuree Dasseea and others.* 6 S. D. A. Rep. 231.

sively in issue his ground *of right* to the property sued for, cannot raise a question as to his claim to continue in *possession* until after a trial in a regular suit, to be brought by the adverse party, independently of any investigation of right. *Khajeh Ibrahim Nicose* v. *Ram Dhun Mullick and others.* 20th Dec. 1849. S. D. A. Decis. Beng. 480.—Barlow, Colvin, & Dunbar.

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14. *Nonsuit.*

214. The omission to specify by name one of the defendants in a civil suit, who was otherwise adequately described, was held to be an insufficient ground for a nonsuit. *Bhugwuttee Dassea, Petitioner.* 18th Aug. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 82.—Reid.

215. In a suit against a number of defendants, it is not a sufficient ground of nonsuit, on an appeal by some of the defendants, that others of the parties, made defendants, had died before the institution of the suit. It must be shewn that the appellants had a direct joint interest with the deceased parties, or were otherwise injured by those parties being made defendants. *Mofeezul Hosein and others* v. *Ruttun Munee Surma and others.* 13th May 1850. S. D. A. Decis. Beng. 197.—Dick, Jackson, & Colvin.

216. Where a suit has not been *properly* preferred before the Court, the order should be for a nonsuit, and not dismissal. *Damoodur Churn Chukurbutty* v. *Nyamut Shah.* 25th Sept. 1850. S. D. A. Decis. Beng. 523.—Barlow, Jackson, & Colvin.

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15. *Default.*

217. Held, that the failure of the plaintiff to reply to the answer of one defendant within the prescribed time, while the case was proceeding, without neglect or default in regard to other defendants, does not constitute the neglect involving dismissal of the action, under Act XXIX. of 1841. *Issurchunder Surma* v. *Beemoolla Debbea.* 7th Feb. 1846. 7 S. D. A. Rep. 226.—Reid, Dick, & Jackson.

218. A decision, by a Principal Assistant Agent, in appeal from an *ex-parte* award of a Moonsiff, was annulled, as pleas for default were not taken as ruled by the Circular Order of the 12th March 1841. *Maharajah Sumboonath Singh* v. *Judoonath Singh and another.* 28th April 1847. S. D. A. Decis. Beng. 117. —Tucker.

219. Neglect of an order issued in the progress of a suit, which is otherwise carried on, is not a default within the meaning of Act XXIX. of 1841. *Gunganarain Mookerjea* v. *Dhunmonee Dassee and others.* 10th May 1847. 7 S. D. A. Rep. 290.—Tucker.

220. And if the defendant puts in his answer, the order to the plaintiff to file documents and a list of witnesses is superseded, for then the plaintiff's duty is to file his replication. The mere non-compliance with the order issued is not, therefore, a default under Act XXIX. of 1841. *Ibid.*

221. A mere omission to do a particular act, while the plaintiff is otherwise engaged in carrying on his suit, does not incur the penalty of dismissal under Act XXIX. of 1841. *Mt. Zobeida Khanum* v. *Lootf-oon-Nissa Begum and others.* 11th May 1847. 1 S. D. A. Sum. Cases, Pt. ii. 99.—Hawkins.

222. An *ex-parte* decision cannot be reversed in appeal, unless the appellant first establish that the usual forms of law were not conformed to in the Lower Court. *Baboo Ram Ruttun Singh and another* v. *Sadick Alee.* 16th June 1847. 2 Decis. N. W. P. 191.—Tayler.

223. A suit cannot be dismissed both on its merits and on the ground of default, under Act XXIX. of 1841. It should be struck off the

file at once, on the ground of default. *Kishen Mohun Mitter and others, Petitioners.* 31st July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 114.—Tucker, Barlow, & Hawkins.

224. No order being passed on a petition asking for time to file a list of witnesses, it was held, that, as the omission was *not a rejection* of the prayer, default was not incurred by the petitioner, who exceeded the time originally granted. *Komul Munnee Dassea* v. *Gooroo Dassee and others.* 5th Aug. 1847. S. D. A. Decis. Beng. 400.—Tucker.

225. Where a case has been decided *ex-parte* in the Court of first instance, the Appellate Court should call upon the defaulting party to justify his default, and, in failure of such justification, should dismiss the appeal on that ground only. *Bodha Mehton and others* v. *Radha Bibi and others.* 22d Sept. 1847. 7 S. D. A. Rep. 398.—Hawkins.

226. But if the Appellate Court consider the default explained, so as to admit the defaulting party to a hearing, the case should be remanded to the Court of first instance for re-investigation. *Ibid.*

227. Neither illness, nor the death of any one not a party in the case, can bar the penalty of default under Act XXIX. of 1841, but, if proved, may justify default under Act XVI. of 1845. *Mahomed Kazim and others, Petitioners.* 19th June 1848. 1 S. D. A. Sum. Cases, Pt. ii. 143.—Hawkins.

228. The grounds, which Act XVI. of 1845 admits in justification of default, cannot be pleaded in appeal from an order of dismissal on default under Act XXIX. of 1841. *Ibid.*

229. Default, under Act XXIX. of 1841, must be held "to be cured," under the provisions of Act XVII. of 1847, when, "passing over the default, steps have been taken in appeal," and the Court below has passed judgment on the case. *Rampershad* v. *Holass Singh.* 19th July 1848. 3 Decis. N. W. P. 230.—Thompson.

230. It was held to be unnecessary to determine whether the non-filing of a separate replication to each answer, within the period allowed by law, did or did not constitute a default under Act XXIX. of 1841, since, even supposing it to be a default, such default became cured under the provisions of Act XVII. of 1847, "when the Lower Court had passed judgment in the suit." *Ameer Ali and others* v. *Moulvee Ahmud Ali and another.* 21st May 1849. 4 Decis. N. W. P. 134.—Thompson, Begbie, & Lushington.

231. Default is not incurred by non-compliance with an illegal order. *Hurree Kishen Shome* v. *Suffer Bibi.* 5th Aug. 1848. S. D. A. Decis. Beng. 742.—Tucker, Barlow, & Hawkins.

231*a*. The plaintiff's failure to deposit, within six weeks after putting in his list of witnesses, the *Talbáneh* of the peon to serve the subpœnas on the witnesses, was held not to be a neglect to proceed so as to constitute a default under Sec. 1. of Act XXIX. of 1841. *Hurrimohan Mujmoodar, Petitioner.* 29th July 1850. 2 Sev. Cases, 581.—Colvin.

231*b*. Where the Court below had applied the law of default on the ground of no reply being filed subsequently to the removal of a pleader by a party in the case, without the party having stated that he would conduct the case himself, or appoint another pleader; the Sudder Dewanny Adawlut held, that the case was necessarily dismissed under Act XXIX. of 1841, and confirmed the order of dismissal accordingly. *Sayyad Rahut Ally, Petitioner.* 23d July 1850. 2 Sev. Cases, 583.—Colvin.

16. *Decree.*

(*a*) *Generally.*

232. Held, that two Judges of the Sudder Dewanny Adawlut can amend an evident error in the decree of a former Judge of the Court without the admission of a formal review. *Jadub Ram Surma* v. *Ramchurn Ker.* 15th July 1841. 1 S. D. A. Sum. Cases, Pt. ii. 14.—Reid & Lee Warner.

233. Held, that an Appellate Court, interfering with a decree of a Lower Court, cannot pass a decision unfavourable to parties not appealing therefrom, and not otherwise before the Appellate Court, without allowing them the opportunity of urging any thing in their behalf.[1] *Gopeenath Koond and another* v. *Lukhun Bukshee and others.* 22d Aug. 1844. 7 S. D. A. Rep. 180. —Tucker, Reid, & Barlow.

234. The proceedings in the Magistrate's Court, under Act IV. of 1840, are not of themselves sufficient proof in a Civil Court on which to found a decree. *Gyanputtee Banoorjea* v. *Suroop Chunder Sircar.* 19th March 1846. S. D. A. Decis. Beng. 110.—Tucker, Reid, & Barlow.

235. A copy of a decision recorded in English, according to Act XII. of 1843, must be given on application. *Superintendent Marine Department, Petitioner.* 8th June 1846. 1 S. D. A. Sum. Cases. Pt. ii. 80.—Reid.

236. A decree based on a bond executed by a son on account of a debt due by his father, has a preferential claim over property, left by the father, to all other decrees against the son who may have inherited such property. *Ruttun Chund and others* v. *Hushmutoonnissa Begum and another.* 26th April 1847. 2 Decis. N. W. P. 105.—Begbie.

237. The Sudder Dewanny Adawlut will not recognise a decree which requires an explanatory letter before it can be understood. *Mohun and others* v. *Ram Buksh.* 15th June 1847. 2 Decis. N. W. P. 183.—Begbie & Lushington.

238 A decision passed on an authorised holiday is therefore defective and void. *Shewuk Ram* v. *Sukhawut Hosein.* 5th Aug. 1847. S. D. A. Decis. Beng. 399.—Jackson.

239. A Civil Court is competent, at the suit of one not a party to the former action, to set aside its own decree in such former action, if shewn to have been collusively obtained.[2] *Guneish Dutt and others* v. *Ramdyal Singh and others.* 7th Sept. 1847. 7 S. D. A. Rep. 391.— —Tucker.

240. An Appellate Court must not, without reference to the grounds of the decision of the Lower Court, reverse such decision on the report and *opinion* of an officer appointed to make a local inquiry. *Nityanund Surma* v. *Pirtigga Dibbea and others.* 1st Dec. 1847. S. D. A. Decis. Beng. 620.—Hawkins.

241. Where a decree had been given for a portion of certain property contained in a deed of sale, it does not follow that the rest of the property conveyed by the same deed must be adjudged in the same manner. For instance, the rule of limitation may be applicable to one part of the property, and not to the other. *Syud Fyz Ali and others* v. *Kumroodeen and others.* 16th March 1848. S. D. A. Decis. Beng. 204. —Hawkins.

242. The decree of a Court of first instance, though modified in appeal, was affirmed, on special appeal, by consent of parties. *Udit Chundur Sein* v. *Ram Ruttun Raee and others.* 18th March 1848. S. D. A. Decis. Beng. 209.—Tucker, Barlow, & Hawkins.

243. The decree of a Zillah Court

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[1] See Construction No. 997.

[2] See Construction No. 1299.

having been based on that of a Special Commissioner subsequently set aside on review, must necessarily be cancelled. *Girdharee Das* v. *Muha Rajah Roodur Singh and another.* 3d July 1848. S. D. A. Decis. Beng. 634.—Rattray, Dick, & Jackson.

244. A previous judgment by a competent tribunal in a suit where the subject-matter and parties were the same, is conclusive, and bars the interference of the Court. *Muddun Mohun Mitr* v. *Salt Agent of Tumlook.* 15th Feb. 1849. S. D. A. Decis. Beng. 35.—Dick, Barlow, & Colvin.

244*a*. Stamp paper for an attested copy of a decree may be received in the *Sirishtah* of the deciding Judge before the preparation of the original decree. *Reed, Petitioner.* 17th April 1849. 2 Sev. Cases, 491.—Barlow, Jackson, & Colvin.

245. Whatever of the claim would have been decreed to the original plaintiff, must be decreed to his admitted representative. Should there be other heirs, or other claimants, they can prefer their claims as plaintiffs notwithstanding. *Duhan* v. *Rawstorne.* 8th May 1849. S. D. A. Decis. Beng. 139.—Dick.

245*a*. On a party filing stamps, in person or by *Vakíl,* for a copy of an order passed on the execution of a decree in his case, he is to be furnished with such copy, without a petition for the same, whether he be stated in the *Rúbakárí* to have been in attendance or not at the hearing, personally or by *Vakíl.* *Reed* v. *Rani Prameswarri and another.* 11th May 1849. 2 Sev. Cases, 497.—Court at large.

246. A decree which had not been formally written, and was not signed, on its apparent date, but was then drawn out only in rough draft, its purport being explained to the parties, and the substance of the decretal order entered in the memorandum book, directed to be kept by Circular Order No. 146 of May 15th, 1835, the fair copy of the decree being made, and the decree being signed, but ante-dated, on the day following, was held, under the terms of Act XII. of 1843, to be a nullity. *Mt. Doorga Koonwur* v. *Mt. Radha Koonwur.* 7th June 1849. S. D. A. Decis. Beng. 181. Barlow & Colvin. (Dick dissent.)[1]

247. It is not a sufficient ground for setting aside a summary award for rent, by a Collector, that the right to the land was disputed at the time. *Sheikh Buktawur and others* v. *Gunganurain Ghose and others.* 13th June 1849. S. D. A. Decis. Beng. 197.—Jackson.

248. Two decrees, upon which the decision of the Lower Court was founded, not being with the record of appeal, the Appellate Court was held bound to call for them before passing judgment. *Khajah Ibrahim Necose Pogose* v. *Nurnurain Dhur and others.* 20th June 1849. S. D. A. Decis. Beng. 242.—Jackson.

249. *Quære,* how far decisions passed upon trial by the judicial tribunals of the native states, in the presence of both the parties before the Company's Courts, ought to be regarded as foreign judgments of the nature of those mentioned in Construction No. 1133, dated the 16th Feb. 1838. *Mt. Ranee* v. *Koonwur Gokul Chund.* 28th July 1849. 4 Decis. N. W. P. 245.—Lushington.

250. A party, sued distinctly, as heir to another, can be held bound by a decree against him, though worded *generally,* only to the extent

[1] Mr. Dick, in recording his dissent, observed—"It seems to me to be unreasonable to construe the words in Act XII. 1843 so as to imply that the points to be decided, the decision thereon, and the reasons for the decision, must all be written and signed at the time of pronouncing such decision. In some instances this would be manifestly impossible. Therefore, the reasonable construction, in my opinion, is, that the points, the decision, and the reasons for the same, must have been written and signed, *so as to be a complete record,* at the time of pronouncing such judgment.

of his legal liability, as heir. *Syud Inayut Ruza* v. *Fletcher and others.* 6th Nov. 1849. S. D. A. Decis. Beng. 424.—Dick, Barlow & Colvin.

251. The terms of a decree, though general, were construed, with reference to the special character of the plaint, to be of special import. *Ibid.*

252. No beneficial award can be given in favour of a respondent not responding, or appealing separately. *Chundernath Dut* v. *Ram Dass Byragee.* 13th Dec. 1849. S. D. A. Decis. Beng. 451.—Barlow, Colvin, & Dunbar.

253. It is not competent to an Appellate Court to alter the decision of a Court of first instance, to the detriment of a party, not made a respondent in the appeal, without the issue of any notice to such party, and in his absence. *Baboo Girjabuksh Singh and others* v. *Griston.* 9th May 1850. S. D. A. Decis. Beng. 196.—Dick, Jackson, & Colvin.

254. An opinion of the bench of the Sudder Dewanny Adawlut, in a remanded case, is not held to have the force of a full decision, so as to bind the judgment of the bench, disposing of the case by a final decree in appeal. *Ramnurain Singh* v. *Raee Hurree Kishen and others.* 26th Aug. 1850. S. D. A. Decis. Beng. 429.—Dick, Barlow, & Dunbar.

(*b*) *Substance of Decree.*

255. A decree should not specify the mode of execution. *Maharajah Rooder Singh* v *Sheikh Jafur Ally and others.* 5th Jan. 1847. S. D. A. Decis. Beng. 1.—Tucker.

256. The decree of an Appellate Court must state distinctly whether it affirms or reverses the decision of the Lower Court. *Cashinath Das* v. *Chundeechurn Bunnik and others.* 5th Jan. 1847. S. D. A. Decis. Beng. 2.—Tucker.

257. It is irregular for a Judge to refer in his decree to other proceedings for the ground of his opinion. *Gopeechand* v. *Ramoo Roy and others.* 23d Jan. 1847. S. D. A. Decis. Beng. 20.—Tucker.

258. Or to refer in his decision to a document filed in another case, without requiring the party interested in it to file a copy thereof in the case before him. *Brown* v. *Ram Kunaee Dutt.* 29th Aug. 1848. S. D. A. Decis. Beng. 791.—Dick.

259. A Judge must not found his decision on any matter not placed on the record before him. *Barodah Dibea* v. *Collector of Twenty-four Pergunnahs and others.* 22d April 1848. S. D. A. Decis. Beng. 352. — Tucker, Barlow, & Hawkins. *Kishen Chundur Raee* v. *Lukheenurain Biswas and another.* 17th April 1850. S. D. A. Decis. Beng. 117.—Barlow & Colvin.

260. As it is the custom in some parts of the country for the right in land to be vested in one party, and the right in trees growing on such land to be vested in another; a party suing for the trees only, and proving his right, cannot be adjudged to have the *use* of the land also, so long as the trees stand, such *use* implying a right to plough and sow the land. *Kanjeemull and others* v. *Purveen Doss.* 26th Jan. 1847. 2 Decis. N. W. P. 14.—Tayler, Thompson & Cartwright.

261. In a suit for pre-emption the decree should record the points proved in evidence, to enable the Appellate Court to judge whether the law has been properly applied. *Rughoobur Dyal* v. *Omed Sing and others.* 6th Feb. 1847. S. D. A. Decis. Beng. 44.—Tucker, Reid, & Barlow.

262. An extra-judicial suggestion to one of the litigants, contained in the decree of a Principal Sudder Ameen, was expunged by a full bench of the Sudder Dewanny Adawlut, though the decree was affirmed. *Seiud Khadim Hoosein* v. *Gowrie Purshad Shah and others.* 6th May

1847. S. D. A. Decis. Beng. 135. —Court at large.

263. If the Appellate Court give any direction inconsistent with the decree of the Court of first instance, it should record its opinion as to whether it affirms the rest of the decree or not. *Gopee Sirdar* v. *Gungadhur Shah and others.* 31st Aug. 1847. S. D. A. Decis. Beng. 488. —Tucker.

264. If a Judge refuse to take evidence upon a particular point, he must not afterwards decree upon that point against the party whose evidence he refused to take. *Kashinath Chuckerbuttee and others* v. *Malika Banoo and others.* 1st Dec. 1847. S. D. A. Decis. Beng. 619. — Hawkins.

265. Where a decree awarded to the plaintiff that portion in a village which he held previous to a certain event, and the amount of that very portion was in dispute between the plaintiff and defendant; it was held, that the decree should go on to state the amount of such portion. *Hurreeram Tewari* v. *Achumbit Raee and others.* 15th Jan. 1848. S. D. A. Decis. Beng. 16.—Hawkins.

266. A decree upholding a sale should specify and determine the extent of the rights possessed, and whether those rights are of a saleable or transferrable nature. *Syud Zamin Ali and another* v. *Ramsurrun Doss.* 31st Jan. 1848. 3 Decis. N. W. P. 34.—Cartwright.

267. A decree cannot be given for any part of property included in a deed determined to be invalid, and upon which the claim is alone grounded. *Hingun* v. *Mt. Azeezoonnissa.* 21st Feb. 1848. 3 Decis. N. W. P. 62.—Tayler, Thompson, & Cartwright.

268. It is necessary to state in the decree the nature of the evidence adduced, and whether it has been substantiated or not. *Nuffer Chundur Hoee* v. *Ramchurn Raee and others.* 7th March 1848. S. D. A. Decis. Beng. 139.—Hawkins.

269. It must appear clear upon the Judge's decree that no material plea or allegation has been overlooked by the Court in forming its judgment. *Ram Chund Bose* v. *Ram Chundur Dut and another.* 9th March 1848. S. D. A. Decis. Beng. 176.—Tucker. *Heera Lall Chowdhree* v. *Rajah Bideanund Singh.* 15th Jan. 1848. S. D. A. Decis. Beng. 14.—Hawkins. *Syud Khadim Hoscin* v. *Moona Lall and others.* 6th April 1850. S.D.A. Decis. Beng. 104.—Colvin & Dunbar.[1]

270. A decree cannot be given on a ground never pleaded in its proper place by the plaintiff. *Maha Lochun Kowur* v. *Sheosukai.* 15th March 1848. 3 Decis. N. W. P. 85.—Thompson.

271. A discrepancy between the vernacular translation of a Judge's decision, and the decision itself, as recorded in English, must be corrected in accordance with the original. *Prem Chand* v. *Tarnee Shunkur Canoongoe.* 22d March 1848. S. D. A. Decis. Beng. 218.—Dick.

272. A plea that a claim was barred by the law of limitation having been once ruled to be untenable, a contrary determination cannot be given in a subsequent suit between the same parties. *Saifoo and others* v. *Nuzzur Mohumed and another.* 4th May 1848. 3 Decis. N. W. P. 141.—Tayler.

273. The Judge is to give or withhold, wholly or in part, what is sought for by the plaintiff, but is not to give him what he does not ask for.[2] *Roopsoonder Raee and another* v. *Sooda Mookee Dassee and others.* 3d June 1848. S. D. A. Decis. Beng. 503.—Tucker, Barlow, & Hawkins. *Reed* v. *Ranee Purmesserie and another.* 4th July 1848. S. D. A. Decis. Beng. 638.—Rattray. *Shumshere Ali* v. *Kenny.* 22d

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[1] Many other cases might be adduced, but it is unnecessary to enumerate them.

[2] See the Case of *Ibrahim Khan* v. *Sayud Muhammad Arab,* 5 S. D. A. Rep. 143.

May 1848. S. D. A. Decis. Beng. 471.—Hawkins. *Baboo Girdharee Singh and others* v. *Sheikh Gholam Hosein and another.* 7th Aug. 1848. S. D. A. Decis. Beng. 749. —Rattray, Dick, & Jackson.[1]

274. A decree must be founded on some intelligible principle, and not on a mere conjecture or compromise to escape a difficulty. *Besakha Dyee* v. *Juggurnath Purshad Mullick.* 7th June 1848. S. D. A. Decis. Beng. 517.—Tucker. *Raee Bykunthnauth Chowdhree and others* v. *Ram Ruttun Raee.* 1st Aug. 1848. S. D. A. Decis. Beng. 733.—Dick.

275. If there be more than one plaintiff, the claims of both must not be rejected where the evidence recorded militates against the claim of one only. *Kalichurn Raee and others* v. *Hurree Kisto Ghose and others.* 15th June 1848. S. D. A. Decis. Beng. 532.—Tucker.

276. An Appellate Court is not restricted to the adjudication of those points only which may be urged in appeal; and objections to the judgment of the Court of first instance, which are discoverable from the record, and which are material to the issue, are open to the adjudication of the Appellate Court, though they may have been overlooked by the Lower Court, or not pleaded by the parties themselves. *Mohun* v. *Bassoo.* 18th Nov. 1848. 2 Decis. N. W. P. 380.—Tayler.

277. The Lower Appellate Court ought not to notice any objections to the plaintiff's right to sue, which were not urged in the Court of first instance. *Mt. Adharee* v. *Rujjub Ali.* 23d Dec. 1848. 3 Decis. N. W. P. 418.—Tayler.

278. The Courts should abstain from offering observations on the merits of a case when the suit has been declared barred by the law of limitation. *Jusram* v. *Dowlut Ram and others.* 29th Dec. 1848. 3 Decis. N. W. P. 429.—Tayler.

[1] Other cases might be adduced, but it is unnecessary to enumerate them.

279. The decree of a Judge must contain the dates of all the occurrences and documents upon which it is founded. *Goordas Koond* v. *Oodye Nurain Raee and others.* 29th Feb. 1848. S. D. A. Decis. Beng. 120. *Kowsilla Dassee* v. *Gourmohun Gosein and others.* 7th Aug. 1848. S. D. A. Decis. Beng. 750.—Hawkins. *Teluk Chundur Shaw* v. *Battersby and others.* 6th Jan. 1849. S. D. A. Decis. Beng. 2.—Hawkins.

280. A debt being contracted by *A* alone, but, as he alleged, on behalf and for the benefit of others, and, in fact, for the payment of revenue due by all; it was held to be necessary for the Lower Courts to investigate the truth of *A*'s assertions, and not to decree against him alone without doing so. *Gopal Das and others* v. *Teelukdharee Lall and others.* 13th Jan. 1849. S. D. A. Decis. Beng. 17.—Jackson.

281. A decree in a suit as to the liability of ancestral estate to sale by a widow, for debts, should set forth the object for which the debts were incurred. *Juggobundoo Bose* v. *Ram Ruttun Raee and others.* 12th Sept. 1848. S. D. A. Decis. Beng. 817. — Hawkins. *Doorga Munee Dibeeah* v. *Chundur Munee Dibeeah and others.* 13th March 1849. S. D. A. Decis. Beng. 64.—Dick.

282. The defendants failing to attend in due time in the Court of first instance, the case was decided *ex-parte.* In their petition of appeal to the Judge, the defendants, besides protesting against the suit having been decided against them *ex-parte,* urged several reasons why such a suit could not be entertained at all by a Court of Justice. Held, that though, on the *facts* of the case, the defendants could not demand a hearing in the Appellate Court, when, by their own neglect, they had allowed the suit to be determined in the Court of first instance, the Judge was bound, under the terms of the Circular Order No. 149. dated the

16th April 1841, to give judgment on those pleas which involved a question of law. *Lalla Hursukai and another* v. *Hoosein Buksh.* 30th April 1849. 4 Decis. N. W. P. 95.—Thompson, Begbie, & Lushington.

283. If a definite claim, made upon one distinct ground, be decided to be invalid, it is not competent to a Court to adjudge to the claimant a portion of the property sued for upon some other ground which he has not himself put forth in the pleadings. *Kummul Munnee Dibbea* v. *Kishen Munnee Dibbea.* 12th July 1849. S. D. A. Decis. Beng. 286.—Dick, Barlow, & Colvin. *Kishen Chundur Raee* v. *Lukhee Nurain Biswas and another.* 17th April 1850. S. D. A. Decis. Beng. 117.—Barlow & Colvin. *Neel Madhobe* v. *Peearee Dasee.* 6th May 1850. S. D. A. Decis. Beng. 175.—Jackson & Colvin. *Peetumbur Mookerjee* v. *Seebchundur Chatterjee.* 20th May 1850. S. D. A. Decis. Beng. 210.—Dick.

284. A decree cannot be given in opposition to the plaintiff's statements upon any material point; and when once a party to a suit has deliberately and intentionally denied any fact, he cannot afterwards admit it, and profit by it; nor can the Court, in passing the decision, proceed as though he had done so. *Gholam Hoossein Khan* v. *Mt. Peearee Begum.* 6th Sept. 1849. 4 Decis. N. W. P. 305.—Thompson, Begbie, & Lushington.

285. Any extra-judicial intimation inserted in a decision by a deciding officer, such as that costs, which he orders a party to pay, may be recovered in another suit, is a mere nullity. *Ram Gopal Mookerjee* v. *Ranee Tara Munee Dibbea and others.* 23d Oct. 1849. S. D. A. Decis. Beng. 398.—Dick.

286. A decree is bad if error or inconsistency are apparent on the face of it.[1] *Rujjoo Raee and others* v. *Mahadeb Singh and others.* 30th March 1850. S. D. A. Decis. Beng. 86.—Colvin & Dunbar.

287. Or, if it be grounded on an assumption of fact obviously contrary to the record. *Hurchurn Sookul* v. *Gopal Buksh Kaha and others.* 19th March 1850. S. D. A. Decis. Beng. 60.—Barlow, Colvin, & Dunbar.

288. Or, if it be inconsistent with a *Fatwa* on which it was professedly based. *Mt. Khoresa Banoo* v. *Abool Hosein and another.* 23d Jan. 1850. S. D. A. Decis. Beng. 5.—Jackson.

289. Or, if it be based upon a mistranslation of a material document. *Juggurnath Shah* v. *Lamb.* 13th Feb. 1850. S. D. A. Decis. 19.—Barlow, Colvin, & Dunbar.

290. Or, if it mis-state points which have, or have not, been urged in the pleadings. *Raj Komar Singh and others* v. *Ram Surn Singh.* 31st Jan. 1850. S. D. A. Decis. Beng. 15.—Barlow, Colvin, & Dunbar.

291. Or, if it shew that the Judge has failed to advert to any important piece of evidence. *Bana Koonwur and another* v. *Asman Koonwur.* 21st Feb. 1850. S. D. A. Decis. Beng. 23.—Dick, Barlow, & Colvin.

292. A decree ought not to direct an adjustment of accounts in execution, but the balance ought to be ascertained before the decree is pronounced. *Lala Hurree Singh* v. *Sheeb Chundur Ghose.* 17th April 1850. S. D. A. Decis. Beng. 118. —Barlow & Colvin.

293. The Lower Court is not justified in giving a decree in favour of a plaintiff, on a plea, inconsistent with that formerly urged by him in a previous suit, no mention of the said plea having been made by him in the previous suit in the Court of first instance. *Bheeka Singh* v. *Chutta Singh and others.* 23d July 1850. 5 Decis. N. W. P. 189.—Begbie, Deane, & Brown.

294. Where an award of a portion

[1] This point has been repeatedly decided.

of a claim has been made upon the admission of a defendant in open Court, after a personal examination of books of account, it is no objection to a decree passed to the extent of that admission, that such decree also sets forth, that, in the opinion of the presiding Judge, the plaintiff has failed, *on his part*, to prove any part of his claim. *Mohummud Busheerooddeen* v. *Hajee Mohummud Kizzilbosh.* 12th Aug. 1850. S. D. A. Decis. Beng. 384.—Dick, Barlow, & Dunbar.

(*c*) *Reasons of Judges.*

295. The decree of an Appellate Court must set forth the grounds of decision in the same manner as the Judges are required to do in original causes. *Kashinath Mookerjea* v. *Indernarain Mookerjea.* 18th Jan. 1847. S. D. A. Decis. Beng 17.—Tucker. *Sreekishen Sirkar* v. *Madhub Chundur Ghose.* 14th June 1847. S. D. A. Decis. Beng. 250. —Tucker. *Jankeeram Bhuggut* v. *Dilshere Khan and others.* 4th Sept. 1847. S. D. A. Decis. Beng. 514.—Hawkins. *Nubboo Komar Chowdhree and others* v. *Ishwur Chundur Chuckerbuttee.* 7th June 1848.—S. D. A. Decis. Beng. 515. —Tucker.

296. An Appellate Court is bound to assign reasons for reversing a Lower Court's judgment. *Hurreekishen Sircar* v. *Madhub Chunder Ghose and another.* 14th June 1847. 7 S. D. A. Rep. 340.—Tucker. *Boondu Sahoo and others* v. *Khedoo Pasbun and others.* 7th March 1848. S. D. A. Decis. Beng. 140.—Hawkins. *Chytunpersaud Raee and others* v. *Gopeemohun Bose and others* 10th July 1850. S. D. A. Decis. Beng. 353. —Jackson & Dunbar.[1]

297. If an Appellate Court make any alteration in a decree, the ground of such alteration should be precisely stated. *Bhola Huree* v. *Sheikh Mohummud Ali and others.* 10th May 1849. S. D. A. Decis. Beng. 145.—Jackson.

298. A Judge trying an appeal is bound to state fully his reasons for setting aside evidence relied on by the Court of first instance. *Vycoontum Pillay* v. *Ramasawmy Chitty.* 10th Sept. 1849. S. A. Decis. Mad. 61.—Thompson.

299. The decree of a Lower Court cannot be set aside without a full statement and consideration of all the reasons upon which it is grounded. *Bhyrub Chundur Raee* v. *Dwarkanath Bose and others.* 20th April 1850. S. D. A. Decis. Beng. 130.—Colvin & Dunbar.[2]

300. A judgment of the Lower Courts, founded on four distinct reasons, the last based on the facts of the case, will stand in special appeal irrespective of any opinion formed as to the first three reasons, such reasons not being in themselves sufficient to overrule the judgment. *Fukeerooddeen Mohummud* v. *Bugwuttee Dassea and others.* 1st Sept. 1847. 7 S. D. A. Rep. 388.—Dick, Jackson, & Hawkins.

301. If the Principal Sudder Ameen adopt the reasons of the Lower Court, it may be considered sufficient merely to say that he is not satisfied with the evidence; but if he have reasons of his own for a contrary decision, he is bound to state them in such a manner, as that the Courts superior to him may be able to judge of them, and of the degree of attention which he has bestowed on the case. *Jankeeram Bhuggut* v. *Dilshere Khan and others.* 4th Sept. 1847. S. D. A. Decis. Beng. 514.—Hawkins.[2]

302. If any inconsistency be observed between the final order of a decree of a Lower Court and the reasons on which that order is founded, the *order* is to be received as expressing the intention of the Court

[1] Many other cases might be adduced, to the same effect, but it is unnecessary.

[2] There are numerous cases to this effect, which it is needless to detail.

by which it was passed; and however such order may be erroneous or inconclusive, the decree must be regarded as final, and not liable to reversal in another suit, between the same parties, in which the same points are submitted for adjudication.[1] *Sookh Lall Dutt* v. *Sheodeen and others.* 1st Oct. 1847. 2 Decis. N. W. P. 357.—Tayler, Begbie, & Lushington.

303. Where two parties are sued jointly on a bond, and the money decreed to be paid by one of them only, the decree must state the reasons for exempting the other from liability. *Juggurnath Dutt and others* v. *Jye Nurain Dutt and others.* 2d Oct. 1847. S. D. A. Decis. Beng. 598.—Tucker, Barlow, & Hawkins.

304. Where a defendant admits part of a claim to land, but disputes the remainder, it is no ground for the entire dismissal of the claim that the claim was unnecessarily brought forward, without, at least, full grounds being recorded in the decree. *Sitladutt Rawut* v. *Sumboo Dutt and others.* 1st Dec. 1847. S. D. A. Decis. Beng. 617.—Hawkins.

304*a*. The Zillah Judge, without any specific ground, reversed the orders of the Principal Sudder Ameen, directing the sale of the property of one of the joint debtors of a decree, in satisfaction thereof, at the special request of the decree-holder. Held, on appeal, that the Zillah Judge ought not to have interfered with the discretion of the decree-holder without distinctly setting forth his reasons for so doing. *Louisa de Silva and another, Petitioners.* 5th March 1850. 2 Sev. Cases, 603.—Colvin.

305. A Court upholding a tenure as rent-free under Sec. 2. of Reg. XIX. of 1793, is bound to shew clearly in its decree how the evidence in the case establishes the conditions required by that law, viz. that the tenure has been held rent-free from before August 12th, 1765, and that there has been no subsequent disturbance of such possession. *Joykishen and another* v. *Hurree Das Mookerjee and others.* 14th March 1850. S. D. A. Decis. Beng. 51. —Barlow & Colvin. (Dick dissent.)

305 *a*. If a Judge award slight damages for what he states to be a grave injury, he must set forth his reasons for so doing in his decree. *Jye Ram Chatterjee* v. *Ram Dhun Mujlea.* 13th April 1850. S. D. A. Decis. Beng. 109.—Barlow & Colvin.

306. In a suit to set aside any settlement proceedings of Revenue officers, the terms and reasons of the opinions formed by those officers, and the grounds on which those opinions are considered erroneous, should be set forth in the Judge's decision. *Osman Sarung* v. *Debee Dass Sein and another.* 8th July 1850. S. D. A. Decis. Beng. 345. —Colvin & Dunbar.

(*d*) *Execution of Decree.*

307. The petitioners, Hindús, having obtained a decree declaratory of their right to claim the performance of certain ceremonies by the other members of their family, and damages for their omission to perform them, together with costs; the Sudder Dewanny Adawlut held, that such decree could only be enforced in regard to the damages and costs of suit, and that each subsequent refusal to perform the rites constituted a separate injury, and became the ground of a separate action. *Holas Ram Deb and another, Petitioners.* 5th Jan. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 21.—Reid.

308. The institution of a suit between co-debtors, arising out of judgment given against them jointly, in favour of a creditor, is no bar to the execution of the decree obtained by the latter. *Ram Doss Bose, Peti-*

[1] The proper course to pursue is to apply to the Lower Court for review of judgment.

tioner. 18th Jan. 1842. 1 S. D. A. Sum. Cases, Pt. ii. 23.—Reid.

309. *A* purchased a certain village, sold under a decree of the Supreme Court, and on going to take possession in the *Mofussil*, was opposed by *B* and *C*, who claimed the property under decrees of the Principal Sudder Ameen's Court passed in their favour. *A*, failing to get possession summarily, brought a regular action to set aside the said decrees, in which cases he was not a party concerned. The Principal Sudder Ameen, with reference to those decrees, without inquiring into the collusion alleged by *A* to have existed between the parties in those cases, dismissed a portion of *A*'s claim, and decreed the remainder. This was upheld by the Judge. Held, that it was incumbent on the Principal Sudder Ameen to go into the case, and pronounce on its merits and the plea set forth in the plaint; and that the decision was clearly opposed to Construction No. 744, which declares that no execution of decree will hold beyond the right of the party against whom it may have been passed. The case was therefore returned for investigation into its merits by the Principal Sudder Ameen. *Bidadhur Misser* v. *Bissessur Pauray and others*. 25th June 1845. S. D. A. Decis. Beng. 204.—Barlow.

310. Under Construction No. 1129, and the Circular Order No. 29, of the 11th Jan. 1839, paragraph 9, the order of a Judge in execution of a decree is unquestionable even by a regular suit, though the point in dispute be neither for usufruct nor interest. *Jy Narain Bose and others* v. *Doola Dibeeah and others*. 15th July 1846. S. D. A. Decis. Beng. 277.—Reid, Dick, & Barlow.

311. When a case for execution of a decree is in appeal before a Judge, the whole case, in every respect, is before him, and he is fully competent to pass an order regarding land decreed to the plaintiff, and possession thereon, notwithstanding the plaintiff has filed his receipt for possession given under the decree. *Ibid.*

312. In a case where lands had been sold to satisfy a decree for rent due on their account; it was held, that the claim of the decree-holder, who had brought the property to sale, and whose decree was founded on four summary awards in his favour for the rent of it, was preferable to the claims of certain other decree-holders who had previously sued out attachment against the property. *Bhowannee Purshad Rai, Petitioner*. 1st Sept. 1846. 1 S. D. A. Sum Cases, Pt. ii. 84.—Reid.

313. A plaintiff having been nonsuited in an action for debt, and made chargeable with costs, sued again, and obtained a decree. In the mean time the defendant sold the decree in the nonsuit to a third party. Held, that the sale, being evidently collusive, was no bar to the amount of costs, due on the first decree, being considered so far a set-off against the amount due on the second decree. *Hurrischunder Bose, Petitioner*. 27th Oct. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 86.

314. Execution of a decree was revived after an adjustment between the parties, it being shewn that the terms of the adjustment had not been complied with by the party against whom the decree had been passed. *Ram Suhai Singh and others, Petitioners*. 8th Feb. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 90.—Reid.

315. An adjustment between parties, after judgment and execution sued out, was held, under the circumstances, to supersede the judgment, and to bar the revival of the execution, notwithstanding the alleged evasion of the terms of the adjustment by one of the parties.[1] *Rani*

[1] In this case the adjustment was a supersession of the decree: in the preceding case of *Ram Suhai Singh and others*, the revival of execution was made to depend

Soorjmunnee Debbea, Petitioner. 9th Feb. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 90.—Reid.

316. Execution of the decree of a Civil Court adjudging land to a party may be taken out, notwithstanding its resumption and assessment. *Bhoobun Mye Debbea, Petitioner.* 5th April 1847. 1 S. D. A. Sum. Cases, Pt. ii. 95.—Tucker.

317. The Civil Courts have the power, under Sec. 7. of Reg. IV. of 1793, of issuing process simultaneously against the person and property of a debtor in execution of a decree of Court. *Syed Mehdee Ali, Petitioner.* 5th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 106.—Hawkins.

318. In the execution of a decree, its terms, when specific, and not those of the documents on which it is founded, are to regulate the course of execution. *Hamid Russool, Petitioner.* 26th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 113.—Hawkins.

319. A decree for possession of property cannot be executed if the property be in the possession of a third party not a defendant in the suit. *Bhujjun Lall and another* v. *Maxwell.* 29th Dec. 1847. 2 Decis. N. W. P. 387.—Tayler, Cartwright, & Begbie.

319 *a*. A decree cannot be executed against the property of a person not a party to it.[1] *Hurgovind Sein, Petitioner.* 26th Feb. 1849. 2 Sev. Cases, 459.—Jackson.

319 *b*. A decree cannot be executed against a person who was not a party to a compromise which was *bonâ fide* entered into between the original parties in the case, and judgment passed accordingly. *Babu Rajkumar Singh, Petitioner.* 26th Feb. 1849. 2 Sev. Cases, 461.—Jackson.

319 *c*. A decree should be executed only against the parties expressly named in the decretal order of the decree, and not against other persons who may have been relatively mentioned in it, in order to mark and clearly shew the identity of the real parties cast and made liable. *Baikanthnath Mullic, Petitioner.* 6th March 1849. 2 Sev. Cases, 465.—Jackson.

320. The application of the holder of a decree against several judgment debtors, to divide their liabilities according to their shares, being rejected, does not preclude execution being taken out against them all jointly and severally. *Saliheh Khatoon and another, Petitioners.* 18th Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 125.—Hawkins.

321. Semble, an order passed in execution of a decree giving possession of particular lands under that decree, does not, under Construction No. 1129, bar a subsequent suit between the same parties for the same lands, if it be distinctly made out, to the satisfaction of the Court, that the land given in execution of the decree was altogether distinct and separate from that claimed in the former suit, and which the Court intended to have awarded in the first decree. *Dwarkanath Thakur* v. *Rajah Anundnath Raee.* 26th Jan. 1848. S. D. A. Decis. Beng. 29.—Jackson, Hawkins, & Currie.

322. A judgment between a mortgagor and mortgagee for foreclosure of a mortgage, is no bar to the execution of a decree held by a third party, with a prior lien (mortgage), upon the same property, established. *Kalee Kishen Nag Chowdhree* v. *Bissumbhur Sein and another.* 12th Feb. 1848. 7 S. D. A. Rep. 439. —Tucker, Hawkins, & Currie.

323. Execution of a Zillah decree was stayed by the Sudder Dewanny Adawlut, in consequence of the lands forming the subject of litigation being undefined in the plaint, and equally so in the decree. *Ooman Dutt and*

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upon the fulfilment or otherwise by the debtor of the terms of the adjustment.

[1] See the parallel case of *Dilawur Allee Khan and others, Petitioners.* 1 S. D. A. Sum. Cases, Pt. ii. 25.

another, Petitioners. 28th March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 137.—Hawkins.

323 *a.* Execution of a decree seventeen years after the date thereof was disallowed in the summary department of the Sudder Dewanny Adawlut.[1] *Behareelaul and another, Petitioners.* 27th Nov. 1848. 2 Sev. Cases, 421.—Hawkins.

323*b.* The Sudder Dewanny Adawlut set aside the orders of a Principal Sudder Ameen, upholding a subsequent composition for payment of costs by a plaintiff in a nonsuited case to his defendant, in deprivation of the rights of a decree-holder previously attaching the same under Construction No. 1248, in satisfaction of his decree against the defendant in the nonsuit case, who was a debtor of the decree-holder, on the ground of evident fraud and collusion between the parties. *Daud Mullick Fredoon Beglar, Petitioner.* 26th Dec. 1848, 2 Sev. Cases, 435.—Hawkins.

324. A decree awarding possession, but leaving the *quantity of lands* to be ascertained in execution, was held to be irregular. *Bhyrob Chundur Chowdhree* v. *Tarnikanth Lahoree and others.* 4th Jan. 1849. S. D. A. Decis. Beng. 1.—Hawkins.

324 *a.* If the enforcement of a decree be required to be made against the heirs or representatives of original parties in the suit, the Zillah Court, instead of proceeding to an immediate enforcement of it, is bound first of all to issue a formal notice to such heirs or representatives, requiring them to shew cause, within a fixed period, why the decree should not be enforced against them.[2] *Baikanthnath Mullic, Petitioner.* 6th March 1849. 2 Sev. Cases, 465.—Jackson.

324 *b.* Execution of a decree, irregularly obtained in a Moonsiff's Court in an *ex-parte* way, may be stayed on security being furnished, even though the period of appeal may have elapsed. *Kumal Mundul, Petitioner.* 19th March 1849. 2 Sev. Cases, 471.—Jackson.

325. A party admitting that he has made over his right in a decree to another, is precluded, without proof of reconveyance to him, from executing it on his own account. *Bipro Churn Chukerbutty* v. *Ranee Buksheer and another.* 24th Dec. 1849. S. D. A. Decis. Beng. 485. —Barlow, Colvin, & Dunbar.

325 *a.* In the case of joint decree-holders, without a specification of the sum payable to each, wherein some wished to enforce their decree, and others did not; the Court held, that execution could not be taken out, unless all of them joined in the application for the enforcement of their decree. *Sheocowar, Petitioner.* 27th March 1850. 2 Sev. Cases, 541.—Dunbar.

(*e*) *Transfer of Decree.*

326. It is not necessary that the transfer of a decree should be made by a regular bill of sale on stamped paper, Construction No. 1341 recognising such transfers by mere endorsement. *Mt. Mukundy* v. *Roop Chund Pandy.* 17th March 1846. S. D. A. Decis. Beng. 107.—Tucker.

327. *A* having sold to his wife *B* a decree obtained by him against *C*, *B* was permitted by the Judge to give her receipt for the amount due, in lieu of purchase-money, if she purchased the property to be sold in satisfaction of the decree. Afterwards this permission was withdrawn

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[1] See the cases *Juggunath Pershad Sircar* v. *Radhanath Sircar,* 2 S. D. A. Rep. 280; and *Sheikh Hosein Buksh and others, Petitioners,* 1 Sev. Cases, 91.

[2] By Sec. 7. of Reg. VIII. of 1825, it is no longer discretionary with the Courts to issue the notice, but imperative; and, in the event of personal service being impracticable, the notice, which is to include the purport of a proclamation, is required, by Construction No. 1236, to be affixed at the defendant's house.

on the objection of *D*, who held a decree against *A*; and who represented that the sale of *A*'s decree to his wife was collusive, with a view to defraud him. Held, that the Judge was competent, under such circumstances, to withdraw his permission, and to require payment of the purchase-money in cash. *Mt. Wuzeer-oon-Nissa, Petitioner.* 10th Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 123.—Hawkins.

328. Construction No. 1341 applies only to cases of amicable and undisputed transfers of decrees, and not to the case of the fraudulent evasion by a decree-holder of the fulfilment of his engagement to transfer his decree after he has received a consideration for the same. *Mohumed Imam Khan* v. *Mohun Lall.* 4th May 1850. 5 Decis. N. W. P. 106 *e.*—Begbie.

(f) Collusive Decree, how set aside.

328*a*. Held, that the Zillah Judge cannot, on the application of *A*, a decree-holder, summarily direct the sale of the estate of *B*, the debtor, against whom *C* had previously collusively obtained a decree for the same estate under a *Khatt Kubálah.* But if the decree in favour of *C* be proved, on the institution of a regular suit by *A*, against *B* and *C*, to be collusive, the estate of *B* will be liable to be sold in satisfaction of *A*'s decree against *B*. *Bibi Takee Sherah, Petitioner.* 16th May 1850. 2 Sev. Cases, 551.—Barlow.

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17. *Confession of Judgment.*

329. A decree is to be given against parties confessing judgment, notwithstanding the suit be dismissed as regards other parties. *Gomanee Ram Sookhul* v. *Makhun and others.* 28th April 1847. 2 Decis. N. W. P. 107.—Tayler, Begbie, & Lushington. *Kunnahee Ditchit* v. *Punchun and others.* 24th Aug. 1847. 2 Decis. N. W. P. 286.—Tayler, Begbie, & Lushington. *Jyekishen* v. *Moordun Goor.* 8th May 1848. 3 Decis. N. W. P. 153.—Tayler, Thompson, & Cartwright.[1] *Jokoo Loll* v. *Kishen Koomar Thakoor Doss and others.* 27th Sept. 1847. 2 Decis. N. W. P. 356.—Tayler, Begbie, & Lushington.[2] *Tarachund* v. *Mohumed Shah Khan and another.* 15th July 1850. 5 Decis. N. W. P. 172.—Begbie, Deane, & Brown.

330. Where certain of the defendants in a suit admitted the justice of the plaintiff's demand, and did not either defend the suit in the Court of first instance, or appeal from its decision to the Judge; it was held, that it was not competent to him to dismiss the plaintiff's claim in respect to those defendants. *Tarachund* v. *Bunseedhur and others.* 30th May 1850. 5 Decis. N. W. P. 103.—Begbie, Deane, & Brown.

331. Where confession of judg-

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[1] These three suits were brought for possession of certain lands by virtue of deeds of sale pronounced to be invalid. The Court remarked in the second suit—"The decree in such cases is not founded upon any deed, which may, as in the present instance, have been pronounced to be invalid, but solely upon the confession of judgment. It affects no one except those persons by whom the confessions of judgment were filed; and the Court are not without hope that the practice of invariably decreeing against parties who file *Ikbál Daawas* may operate as some check upon the institution of those numerous fraudulent suits which appear before the Civil Courts in this form."

[2] The grounds of the suit do not appear in the record of this case. The Court, after referring to their remark, quoted in the previous note as the basis of their decision, added—"Cases may certainly occur in which it would be inexpedient to adhere to the above rule: for instance, when the admission of one defendant is inseparable from the denial of the other defendants, or when there is any reason to believe that execution of the decree, if taken out, will be injurious or harassing to the defendants who were not parties to the confession of judgment."

ment, on the part of female defendants to a suit, was put in by the *male* defendants, *without the knowledge or consent of the female defendants,* who, from their secluded position, were not unlikely to be thus imposed upon, such confession of judgment was set aside altogether. *Mohumed Ibadoollah Khan* v. *Mohumed Hoossein Ali Khan and others.* 7th Sept. 1850. 5 Decis. N. W. P. 288.—Begbie, Lushington, & Brown.

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18. *Review of Judgment.*

332. A review of judgment having been granted by the Sudder Dewanny Adawlut; according to the practice of the Court, the whole case is re-opened for investigation. *Meer Koodrut Oolah and others* v. *Meer Rumzaun Oolah and others.* 7th May 1845. S. D. A. Decis. Beng. 148.—Reid, Dick, & Gordon.

333. A review of judgment of a Provincial Court was admitted, on the ground of inconsistency with a subsequent decision of the Sudder Dewanny Adawlut in a separate case, but connected with it. *Kashenath and others* v. *Muddun Gopal and others.* 4th Feb. 1846. S. D. A. Decis, Beng. 35.—Reid, Dick, & Jackson.

334. Held, on special appeal, that if a plaintiff in a case have any new evidence to produce, which would shew that a former decision on his suit was erroneous, he should apply for a review of judgment, and cannot again sue the defendant on the same claim. *Gournath Soorma Moojumudar* v. *Joogeysur Gosain.* 15th July 1846. S. D. A. Decis. Beng. 275.—Reid, Dick, & Jackson.

335. A party sued for a sum of money and interest, and obtained a decree in 1838. Afterwards he ascertained that in the decree no provision had been made for the interest, and he therefore brought an action for the same in the year 1845. A decision was given in his favour in both the Lower Courts. Held, on special appeal, by the Sudder Dewanny Adawlut, that he ought to have been nonsuited, as his proper course under paragraph 7 of the Circular Order dated the 11th Jan. 1839, in such circumstances, was to have applied for review of judgment.[1] *Madho Pershad and another* v. *Junghai.* 3d Aug. 1846. 1 Decis. N. W. P. 93.—Thompson, Cartwright, & Begbie.

336. A decision should not be passed without reference to the points on which a review of judgment was authorised. *Bydnath Bose and another* v. *Ali Akbur Khan and others.* 13th Jan. 1847. S. D. A. Decis. Beng. 9.—Tucker.

337. The rejection by the Sudder Dewanny Adawlut of an application for a special appeal against a decision of a Lower Court does not bar a review of judgment by such Lower Court.[2] *Syed Kiramut Ullee, Petitioner.* 9th Aug. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 115.—Hawkins. *Kuleemanoo and others, Petitioners.* 18th July 1850. 3 Sev. Cases, 75.—Colvin.

338. A review of judgment was sanctioned to admit evidence not considered necessary at the previous stages of the case. *Wise* v. *Rajkishen Chuckerbuttee.* 11th May 1848. S. D. A. Decis. Beng. 432.—Tucker, Jackson, & Hawkins.

339. A review of judgment was granted to correct an erroneous application of the law of limitation. *Nundkomar Raee and others* v. *Indermunnee Chowdhrain and others.*

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[1] The Court observed, that though the original decision was given anteriorly to the publication of the Circular Order of the 11th Jan. 1839, yet, as that Circular could only be looked upon as explanatory of a pre-existing law, and as the plaintiff's suit for the interest was instituted long after the promulgation of that Circular, he had brought his action contrary to both law and practice, and must therefore be nonsuited.

[2] Construction No. 1057.

31st May 1848. S. D. A. Decis. Beng. 486. — Dick, Jackson, & Hawkins.

340. Permission granted to a Moonsiff to review his judgment was held to vitiate all subsequent proceedings, there being no Regulation or Act authorizing the Judge to grant such permission. *Purshad Sahoo and another* v. *Moonshee Rahut Ali and others.* 8th July 1848. S. D. A. Decis. Beng. 645.—Tucker, Barlow, & Hawkins.

340 *a*. An application of review was held, under Cl. 10. of Sec. 8. of Reg. XXVI. of 1814, to have been properly filed on the 3d March 1849, on a stamp of Rs. 2 value, notwithstanding the lapse of seven months and twenty-seven days from the 4th July 1848, the date of the decree. *Reed, Petitioner.* 17th April 1849. 2 Sev. Cases, 491.—Barlow, Jackson, & Colvin.

340 *b*. The signing and filing of an application for a review of judgment by a *Mukhtár*, in behalf of his principal, was held to be irregular and informal, and rejected accordingly. The party himself, or his duly authorised pleader, being the only persons who are entitled to file a petition of review. *Reed* v. *Rani Sidhwutti and others.* 25th April 1849. 2 Sev. Cases, 489.—Dick, Barlow, & Colvin.

341. An award having been delivered on an appeal to the Sudder Adawlut by a Judge of that Court, who, as it appeared, when Collector of Chingleput, passed a decision on the matter at issue, and which very decision gave rise to the original suit; the Sudder Adawlut granted a review of judgment, being of opinion that the adjudication of the suit by such Judge was contrary to the spirit of Reg. III. of 1825. *Aureemoottoo Vydeanadha Moodely and others* v. *Vencatachella Moodely and others.* 27th Aug. 1849. S. A. Decis. Mad. 47.—Hooper.

341 *a*. An application for review of judgment, preferred after three calendar months from the date of decision (the interval between furnishing stamp paper for copy of the decision and the tender or delivery thereof being excluded from the calculation of the period limited for the admission of reviews), must be engrossed on stamp paper of full valuation, with reference to the amount or value of the property adjudged against, in like manner as if a regular appeal were preferred from such judgment. *Nabkishore Bhuyan and others, Petitioners.* 19th Mar. 1850. 3 Sev. Cases, 7.—Colvin.

341 *b*. An application for review of judgment must be accompanied by an attested copy of the decree sought to be reviewed, on stamps of Rs. 4 value, and in the language of record adopted by the Court. *Juychandra Roy* v. *Bhairabchandra Roy and another.* 17th July 1850. 2 Sev. Cases, 575.—Barlow, Colvin, & Dunbar.

341 *c*. Filing a review, accompanied by an attested copy of the English decision recorded under Act. XII. of 1843, was held not to be a fulfilment of the requirements of the provisions of Reg. XXVI. of 1814. *Ibid.*

341 *d*. Held, that the filing of reviews on stamps of full value does not cure the defect of omission in endorsing on the application of review, the reason why it was presented after the three months prescribed by Cl. 2. of Sec. 4. of Reg. XXVI. of 1814. *Hunter* v. *Gobindchund Moonshee.* 30th July 1850. 2 Sev. Cases, 585.—Court at large.

341*e*. Held, by four Judges against one (Sir R. Barlow), that the reasons for delay should ordinarily be stated in the petition for admission of review; but that the Court may allow them to be assigned orally. *Ibid.*

341*f*. Held, that the terms of Cl. 3. of Sec. 4. of Reg. XXVI. of 1814 connect together the rules of review of judgment of the Sudder as well as the Zillah Courts, and that the restriction in Cl. 2. of Sec. 4. of

the same Regulation, as regards review of the decisions of the Zillah and City Courts, are clearly applicable to applications for reviews of the judgment of the Sudder Dewanny Adawlut. *Ibid.*

342. *A* sued *B* on three distinct bonds. Suits on two were tried by the Principal Sudder Ameen as original suits, and his decisions were reversed by the Judge. The third suit was tried by the Moonsiff, and, in appeal, by the Principal Sudder Ameen but did not go before the Judge. A special appeal was admitted for review of the judgment in appeal by the Principal Sudder Ameen in this third suit, and a re-trial of the suit ordered, under the circumstances of the case. *Thakoor Buksh Tewaree* v. *Hurchundur Raee Canoongoe.* 21st Aug. 1850. S. D. A. Decis. Beng. 420.—Dick, Barlow, & Colvin.

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19. *Powers of Judges.*

343. Held, that a Zillah Judge was not warranted in refusing payment of money, realised in execution of a decree, and deposited in the treasury of the Zillah Court, to the son of the deceased decree-holder, in consequence of objections urged to such payment, in the form of a letter addressed to the Judge by an attorney of the Supreme Court. *Petruse Nicholas Pogose, Petitioner.* 4th June 1836. 1 S. D. A. Sum. Cases, Pt. i. 10.—D. C. Smyth.

344. In a case in which a *Rázi námeh* and a *Sulah námeh* were executed by both parties, a decision in conformity therewith, although in reversal of the judgment of the Lower Court, was passed by a single Judge of the Sudder Dewanny Adawlut.[1] *Tara Chand Buttacharje* v. *Ramjye Dutt and others.* 19th April 1845. 7 S. D. A. Rep. 202.—Reid. *Loknath Moitr* v. *Bishunnath Biswas.* 5th Feb. 1848. S. D. A. Decis. Beng. 57.—Jackson.

345. Held, that the decisions of two Judges of the Sudder Dewanny Adawlut overruled that of one Judge of the Provincial Court. *Government* v. *Ram Narain.* 28th March 1846. S. D. A. Decis. Beng. 126. —Tucker, Reid, & Barlow.

346. A difference as to some of the reasons of the decree of a Lower Court, whilst there is agreement as to others, does not constitute the difference of judgment, which requires the single Judge thus partially differing to refer the case for the decision of a full Court, under Act II. of 1843. *Issurchunder Ghose* v. *Nil Kummul Pal Chowdree and others.* 16th June 1846. 7 S. D. A. Rep. 223.—Jackson.

347. It is illegal for a Judge to send for and examine the proceedings in another case, to which the plaintiff was not a party, and to found a decree solely upon those proceedings.[2] *Juggonauth Purshad* v. *Sookul Aheer.* 10th Sept. 1846. 1 Decis. N. W. P. 159.—Thompson.

348. The order of a Zillah Judge refusing to proceed against parties for forgery, or perjury, is final. *Mudaree Khan, Petitioner.* 15th Sept. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 85.—Reid.

349. The judgment of the Lower Court was modified by a single Judge with consent of parties. *Doodraj Singh and others* v. *Imrut Lal.* 23d Jan. 1847. S. D. A. Decis. Beng. 18.—Rattray. *Govind Lal Raee* v. *Usdun-o-nissa Bibi.* 28th April 1847. S. D. A. Decis. Beng. 115.—Dick. *Reed* v. *Ranee Purmesserie and another.* 4th July 1848. S. D. A. Decis. Beng. 638. —Rattray.

350. A Zillah Judge is bound by the decision of his predecessor in

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[1] And see the case of *Prannath Chaudhuri* v. *Chandramuni Devi,* 5 S. D. A. Rep. 328; and *Fazil Khan* v. *The same, Ib.*

[2] But see the Circular Order, S. D. A. N. W. P. No. 1603, dated the 4th Dec. 1846. And *supra,* Tit. EVIDENCE, Pl. 57 *et seq.*

office, and is not at liberty to uphold an original decision, which had been reversed and set aside by such predecessor. *Kishen Dyal Singh and others* v. *Taleemund Raee and others.* 17th June 1848. S. D. A. Decis. Beng. 535. — Tucker, Barlow, & Hawkins.

351. A petition of form presented to the register of deeds, or to the Collector, with a view to transfer of names, and containing an admission that the petitioner had received his money, does not take it out of the province of the Judge to determine the point, should it be contested in a suit before him. *Zorawur Singh* v. *Mehtab Singh.* 23d July 1850. 5 Decis. N. W. P. 186. — Begbie, Deane, & Brown.

352. Before a Judge makes over parties, or witnesses, to the Criminal Courts, on charges of fraud or perjury, it behoves him to hold an inquiry, and to record his reasons for believing the charges to be proved.[1] *Bhugwan Dass* v. *Boodar.* 21st Sept. 1850. 5 Decis. N. W. P. 338.—Begbie & Lushington.

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20. *Remanding Cases.*[2]

353. Where a case has been decided *ex-parte* in the Lower Court, and the defaulter shews, on appeal, that the notice of action had not been duly served, the case ought to be remanded to the Lower Court for re-trial, and the Superior Court ought not to enter upon the merits. *Mt. Tara Munnee Dassee* v. *Ram Ruttun Shah and others.* 25th Nov. 1847. S. D. A. Decis. Beng. 613. —Hawkins.

354. *A* obtained a decree in the Moonsiff's Court against *B* and the property of *C.* The Principal Sudder Ameen, in appeal, exonerated *B*, and reversed the Moonsiff's judgment *in toto:* the heirs of *C* did not appeal. The Sudder Dewanny Adawlut, in special appeal, remanded the case to the Principal Sudder Ameen to pass proper orders with reference to that part of the Moonsiff's decision which bore upon the property of *C. Sham Ram Shah* v. *Bholanath Shah and others.* 11th March 1845. S. D. A. Decis. Beng. 47.—Tucker.

355. A suit was remanded because the requirements of Act XII. of 1843, had not been complied with. *Ram Ram Beish* v. *Birj Mohun Dutt and others.* 26th March 1845. 7 S. D. A. Rep. 201.—Barlow.

356. A case was remanded where a Judge, having amended the Principal Sudder Ameen's decision, had neglected to point out, specifically, wherein he considered that officer's investigation, or judgment, open to reversal, and also to indicate the grounds on which his own decision was founded, all of which it was incumbent upon him to do. *Radhamohun Ghose Chowdree* v. *Gudadhur Addie and others.* 26th March 1845. S. D. A. Decis. Beng. 81.—Barlow.

356*a*. Where a case was tried *ex-parte* by the Moonsiff, and an appeal was preferred by the defendant, and tried on its merits by the Principal Sudder Ameen, without requiring the appellant to shew cause why he did not defend the suit in the Moonsiff's Court, a special appeal was admitted, and the case sent back, as such a mode of proceeding was in violation of the Circular Order of the 12th March 1841. *Bishen Nath Patoodie* v. *Rajah Mahtab Chunder.* 29th March 1845. S. D. A. Decis. Beng. 90.—Tucker, Reid, & Barlow.

357. A case was remanded where there was a total want of specification of dates in the plaint, on which account it was impossible to say whether the suit might not be barred altogether under the rule of limita-

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[1] See Construction No. 925.

[2] The grounds of remand are very numerous, and it would be nearly impossible to adduce cases to illustrate all of them. The following, however, it is believed, will be found to comprise the most important.

tion. *Mt. Radeeha Chowdrain* v. *Ameerchunder Baboo and another.* 8th April 1845. S. D. A. Decis. Beng. 105.—Gordon.

358. An Appellate Court, in sending a case back for re-trial, should not dictate to a Lower Court what decision such Lower Court should pass. *Rajah Mode Narain Singh* v. *Mt. Man Koonwur and another.* 26th April 1845. 7 S. D. A. Rep. 203. —Tucker, Reid, & Barlow.

359. Where a decree had been pronounced *ex-parte* against a minor, whose property was under the jurisdiction of the Court of Wards, and it appeared, that though due notice had been served on the defendants, the omission to file an answer had originated in the dilatory proceedings of the Revenue authorities; the case was sent back to be investigated on its merits. *Ramchunder Mujmooadar* v. *Ramgopal Mookerjea.* 24th July 1845. S. D. A. Decis. Beng. 246.—Gordon.

360. A case was remanded where the Principal Sudder Ameen dismissed the claim, as barred by the rule of limitation, without shewing in what manner the rule applied. *Mt. Punchumee Dossee* v. *Anund Chunder Chowdry and others.* 24th Jan. 1846. S. D. A. Decis. Beng. 17.—Reid.

361. The plaintiff was nonsuited in the Court of first instance: the Lower Appellate Court decided the case on its merits, considering the grounds for a nonsuit untenable. Held, by the Sudder Dewanny Adawlut, that the Lower Appellate Court should have remanded the case for re-trial to the Court of first instance, and should not have entered upon the merits. *Roop Chund* v. *Poorun Chund and another.* 14th July 1846. 1 Decis. N. W. P. 77.—Thompson, Cartwright, & Begbie. (Tayler dissent.)[1] *Sheikh Ali Hatim and another* v. *Saunders.* 24th Feb. 1848. 3 Decis. N. W. P. 64.—Tayler.[2] *Muhomed Nadir Khan and another* v. *Syed Shere Shah.* 26th April 1848. 3 Decis. N. W. P. 125.—Cartwright.

362. An Appellate Court, reversing an order of nonsuit, should return the case for disposal on its merits. *Holas Singh* v. *Sumrun Raee and another.* 20th May 1848. S. D. A. Decis. Beng. 469.—Rattray. *Sheikh Manoollah Mistree* v. *Gudadhur Doolooree and others.* 31st May 1848. S. D. A. Decis. Beng. 485.—Barlow. *Fowle* v. *Brightman.* 25th Nov. 1848. S. D. A. Decis. Beng. 860.—Tucker & Hawkins.

363. And the same rule will equally extend to cases in which a nonsuit may have been declared as to parts of the claim. *Syed Imdad Hoossein and others* v. *Mohumed Buksh and others.* 16th Sept. 1850. 5 Decis. N. W. P. 331.—Begbie, Deane, & Brown.

364. Where the Judge had refused to remand a suit for retrial to the Moonsiff, and had directed the Principal Sudder Ameen to supply deficient evidence in his own Court; it was held, that the merits of the case having been entered into by the Moonsiff, it was not necessary to remand it to the Court of first instance, as it would have been in the case of a nonsuit, although the decision given was adverse to the plaintiff. *Emam Buksh and others* v. *Koorban Ali.* 29th May 1848. 3 Decis. N. W. P. 174.—Thompson & Cartwright.

365. A case was remanded where the decisions of the Lower Courts were conflicting and opposed to each other, though both founded upon a plan of

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[1] Mr. Tayler thought it unnecessary to remand a suit for re-investigation in which the Appellate Court had already pronounced judgment on its merits.

[2] In this case Mr. Tayler observed that he would have rejected the special appeal, on the ground stated by him in the preceding note; but he gave his decision in conformity with the precedent established by the former case of *Roop Chund* v. *Poorun Chund.* The point has been frequently held in conformity with the same precedent.

the premises in dispute, furnished by an accredited officer, and both concurred in decreeing the case. *Simbhonath and others* v. *Pursotim and others.* 24th Aug. 1846. 1 Decis. N. W. P. 126.—Thompson, Cartwright, & Begbie.

366. And where a plea by the defendant, that he was not solely responsible for the amount claimed, had not been determined. *Mujoo Begum* v. *Mahomud Bakur Khan.* 9th Dec. 1846. 1 Decis. N. W. P. 244.—Cartwright.

367. Where a case had been tried *ex-parte* in the Lower Court on default of a party, and such party shewed, on appeal, that no notice had been served upon him of the suit in the Lower Court, the case was remanded for re-trial. *Kooshyedas Bose* v. *Bamasoondri Dasi and another.* 16th Jan. 1847. S. D. A. Decis. Beng. 10.—Tucker. *Mt. Tara Munnee Dassee* v. *Ram Ruttun Shah and others.* 25th Nov. 1847. S. D. A. Decis. Beng. 613. —Hawkins.

367 *a.* Where the Zillah Judge had, on a summary appeal, reversed the orders of the Principal Sudder Ameen merely with reference to the Circular Order of the 10th June 1842, without first disposing of the grounds of the decision arrived at by the Principal Sudder Ameen; the Sudder Dewanny Adawlut remitted the case as incomplete for the fulfilment of the requirements of the rules in force. *Shumsoonnissa Bebee, Petitioner.* 24th April 1847. 2 Sev. Cases, 409.—Hawkins.

368. A case was remanded where a claim to a set-off in account, instead of being inquired into, had been rejected as rather the subject of a fresh suit. *Ramdyal Singh* v. *Mt. Joy Konwur and others.* 15th May 1847. 7 S. D. A. Rep. 291.—Hawkins.

369. The parties in a suit for real property having joined issue upon the question of right under the law and facts of the case, and the Court of first instance having decided thereon, the Appellate Court reversed the judgment upon a point irrelevant to the issue. The Sudder Dewanny Adawlut admitted a special appeal, and, annulling the judgment of the Appellate Court, remanded the case for re-trial. *Ramkesub Pal and others* v. *Asaram Pal and others.* 12th June 1847. 7 S. D. A. Rep. 338.—Hawkins.

370. A case was remanded where no notice had been taken in the Lower Courts of the defendant's plea of adverse possession of the lands sued for for twenty years. *Sunkur Roy and others* v. *Surbjeet Roy and others.* 24th June 1847. 7 S. D. A. Rep. 349.—Hawkins.

371. And where the Court of first instance had made some of the defendants witnesses in the cause.[1] *Ramlochun Goh* v. *Gooroo Purshad Goh and others.* 11th Aug. 1847. 7 S. D. A. Rep. 380.—Dick, Jackson, & Hawkins.

372. Although the Principal Sudder Ameen had, in conformity with the Judge's instructions, passed a decree entirely opposed to the plaint; yet, as he had adjudicated the real point at issue between the plaintiff and defendant, and his decision had been upheld in appeal; it was held to be unnecessary to remand the suit for re-investigation on the tenor of the plaint. *Rind* v. *Biddhee.* 15th Sept. 1847. 2 Decis. N. W. P. 327. —Tayler, Begbie, & Lushington.

373. A case was remanded where one of two defendants had not been included in a decree, and no reason given for his exclusion. *Juggurnath Dutt and others* v. *Jye Nurain Dutt.* 2d Oct. 1847. S. D. A. Decis. Beng. 598.—Tucker, Barlow, & Hawkins.

374. And where a claim and a counter-claim had been dismissed, the two judgments being contradictory. *Mt. Anund Mye and others* v. *Mo-*

[1] See the case of *Gour Chunder Podar* v. *Chunder Kullah.* 7 S. D. A. Rep. 155.

hummud Naim and others. 24th Nov. 1847. S. D. A. Decis. Beng. 610.—Hawkins.

375. And where a claim was wholly dismissed, though only partially disputed. *Sitladutt Rawut* v. *Sumboo Dutt and others.* 1st Dec. 1847. S. D. A. Decis. Beng. 617.—Hawkins.

376. And where a Judge had refused to take evidence at all upon a particular point, and had afterwards decided the case upon that very point against the party whom he had prevented from tendering evidence. *Kashinath Chuckerbuttee and others* v. *Malika Banoo and others.* 1st Dec. 1847. S. D. A. Decis. Beng. 619.—Hawkins.

377. A case was remanded where the Lower Courts disposed of a doubtful question of Hindû law without reference to the *Pandit.* *Jokee Raee and others* v. *Baboo Pertab Nurain and others.* 7th Jan. 1848. S. D. A. Decis. Beng. 7.—Tucker.

378. Where a decision is incomplete, pronouncing on only one or more claims involved in the plaint, the case will be sent back for re-investigation. *Sheikh Soojant Hosein* v. *Rajah Hetnurain Singh.* 12th Jan. 1848. S. D. A. Decis. Beng. 11.—Hawkins. *Rajah Sreenund Raj Sree Junardhun Sund* v. *Joogulchurn Chumputtee and others.* 3d Feb. 1848. S. D. A. Decis. Beng. 51. —Jackson.[1]

379. Where, in a suit for pre-emption, the Lower Court's decree set forth that the requisitions, preliminary to a claim by pre-emption, had been complied with, but did not state what those requisitions were, and what, in the judgment of the Zillah judicial authorities, the law required in that respect, the case was remanded. *Nurrukbuxsh Singh and another* v. *Achibur Singh and others.* 13th Jan. 1848. S. D. A. Decis. Beng. 12. Hawkins. *Rughoobur Dyal* v. *Rajah Singh and others.* 15th Aug. 1848. S. D. A. Decis. Beng. 766.—Rattray.

380. And where a plea urged by one of the parties had not been sufficiently inquired into. *Gopee Chund and others* v. *Ramoo Raee.* 12th Jan. 1848. S. D. A. Decis. Beng. 10.—Hawkins. *Heera Lall Chowdhree* v. *Rajah Bideanund Singh.* 15th Jan. 1848. S. D. A. Decis. Beng. 14.—Hawkins. *Sobho Ram* v. *Shah Behari Lal.* 15th Jan. 1848. S. D. A. Decis. Beng. 15. —Hawkins.[2]

381. And where the usual notice to claimants had not been issued by the Moonsiff in a suit for inheritance. *Mt. Kassee Issoree Dibbea and another* v. *Goluck Chundur Gungolee.* 22d Jan. 1848. S. D. A. Decis. Beng. 28. Tucker, Barlow, & Hawkins.

382. And where the decision was based on a disputed document which was not produced in Court. *Gholam Komar* v. *Moulvee Muhseenuddeen.* 16th Feb. 1848. S. D. A. Decis. Beng. 82.—Tucker.

383. And where the decision was based upon a statement not admissible in evidence. *Bissessuree Dibbea* v. *Eshenchunder Chuckerbuttee.* 21st Feb. 1848. S. D. A. Decis. Beng 100.—Jackson.

384. And where the Appellate Court had reversed the Lower Court's decision without due consideration of certain facts. *Muharajah Ishwuree Purshad Nurain Singh* v. *Murjad Singh.* 21st Feb. 1848. S. D. A. Decis. Beng. 104.—Tucker.

385. And where a decree was passed against the trustees of a minor, but did not shew whether they were held personally liable, or liable only in their capacity of trustees. *Hurish Chundur Shaw* v. *Gunga Purshad Behari and another.* 2d March 1848. S. D. A. Decis. Beng. 130.—Hawkins.

[1] Many other cases to the same effect might be cited, but it is unnecessary to enumerate them.

[2] This point has been repeatedly decided.

386. And where the Judge had not resorted to all reasonable means to inform himself of the truth. *Mackintosh* v. *Kareemun Jha.* 28th March 1848. S. D. A. Decis. Beng. 245.—Hawkins. *Sobhoram* v. *Shah Behari Lal.* 15th Jan. 1848. S. D. A. Decis. Beng. 15. —Hawkins.[1]

387. And where the judgment of the Lower Court was founded upon a former decree to which the plaintiff was not a party. *Mussee-o-Ruhman and others* v. *Taujooddeen and others.* 28th March 1848. S. D. A. Decis. Beng. 246.—Hawkins.

388. And where the decree was based upon an order of the Sudder Dewanny Adawlut which had been subsequently reversed. *Ramkoonwur and another* v. *Kishoree Lal.* 6th April 1848. S. D. A. Decis. Beng. 292.—Jackson, Hawkins, & Currie.

389. And where the Lower Appellate Court impugned a document on insufficient grounds. *Mt. Kunoka Dassee* v. *Gour Mohun Shah.* 19th April 1848. S. D. A. Decis. Beng. 345.—Tucker.

390. And because only one of two claims involved in a plaint had been pronounced upon. *Ramanund Surma* v. *Bowaneepurshad Raee and others.* 13th June 1848. S. D. A. Decis. Beng. 525.—Hawkins.

391. And where a decree was contrary to the provisions of Act. XII. of 1843, which enjoins that so much of all decrees as consist of the points to be decided, the decision thereon, and the reasons for the decision, shall be written in English by the Judge. *Reazut Ali and others* v. *Debnurain Ghose and others.* 15th June 1848. S. D. A. Decis. Beng. 532. —Tucker.

392. A suit was remanded where the Lower Court had adjudged certain shares of property to two defendants, to the exclusion of the plaintiff, without deciding on the validity of an *Ikbál Daawa* mentioned in the plaint, by which, as the plaintiff asserted, the defendants had acknowledged that they had no right to such shares. *Gopeenath* v. *Saadut Ali and others.* 26th June 1848. 3 Decis. N. W. P. 215.—Cartwright.

393. And where a decision, which ought to have been governed by the law of Mithila, was founded on a precedent governed by the law of Bengal. *Iktear Raee and others* v. *Rughonath Purshad and others.* 16th Aug. 1848. S. D. A. Decis. Beng. 767.—Rattray.

394. A case was remanded where the Lower Appellate Court had overlooked that portion of the judgment of the Court of first instance which ruled, that a former suit by the plaintiff, on which the present action was founded, was a fraudulent one. *Rumessur Singh* v. *Agund Rawut.* 23d Nov. 1848. 3 Decis. N. W. P. 395. —Cartwright.

395. And where a decree rested upon a Circular Order of a Zillah Judge, who has no power to issue Circular Orders. *Sreenussoo Atta Bewa* v. *Sheikh Babun Beparee and others.* 23d Dec. 1848. S. D. A. Decis. Beng. 881.—Hawkins.

396. In a suit on a bond written in the English language, the evidence of the witnesses being also given in English, an appeal was preferred in the Court of an additional Principal Sudder Ameen, who did not understand English. In the Zillah there was a Principal Sudder Ameen, who, as well as the Judge, understood English, and the case was remanded to be re-tried by such Principal Sudder Ameen, or by the Judge. *Smith* v. *Wilson.* 23d Dec. 1848. S. D. A. Decis. Beng. 882.—Hawkins.

397. A case was remanded where the Judge had based his decision on a Regulation which had been rescinded, and on a precedent decided under the same rescinded Regulation. *Teelokenath Jah* v. *Munrunjun Singh.*

[1] Many other cases to the same effect might be cited, but it is unnecessary.

22d Jan. 1849. S. D. A. Decis. Beng. 21.—Dick.

398. And where the Lower Court, reversing a sale, gave no directions for reimbursing the purchaser, and did not record its reasons for not directing him to be reimbursed. *Shibsoondree Dassee* v. *Pudmolochun Surma and others.* 21st June 1849.—Jackson.

399. And where the plaintiffs had pleaded throughout the case that a document produced by the defendants was a forgery, and that one of the parties by whom it was alleged to have been executed, died the year previous to the date of the document, and no notice of the plea had been taken in the Lower Courts. *Condapa Moodily and another* v. *Veerasamy Moodily and others.* 2d July 1849. S. A. Decis. Mad. 12.—Thompson.

400. A special appeal having been admitted, on a supposed contravention of Construction No. 1073, by a Lower Court having gone into points not included in the order of remand; it was held, that the order of remand was not special, but opened up the whole case, and had been duly complied with. *Surnam Misr* v. *Soobrun Singh and others.* 5th July 1849. S. D. A. Decis. Beng. 271.—Dick, Barlow, & Colvin.

401. Plaintiff sued defendants for a balance due on a settlement of accounts. One defendant admitted the settlement, but pleaded subsequent dealings and payments in liquidation of the debt. The Lower Courts dismissed the suit without receiving evidence either oral or documentary, on the ground that the plaint did not embrace all the dealings between the parties. Held, on special appeal, that the case ought to have been disposed of after a full investigation of its merits; and it was accordingly remanded for re-trial. *Soobaroya Moodily* v. *Chinna Cunnoo Chetty.* 23d July 1849. S. A. Decis. Mad. 32.—Thompson.

402. A case was remanded where the plaintiff's plea of minority, in bar of lapse of time, had not been considered. *Mt. Ameerun* v. *Mt. Wuzeerun.* 25th July 1849. S. D. A. Decis. Beng. 304.—Jackson.

403. And where the Judge had neglected to call for a merchant's accounts, which, if produced and proved, would have been sufficient to have established the plaintiff's claim. *Augah Mohomud Ismayel Saib* v. *Shumshamooddowlah.* 20th Aug. 1849. S. A. Decis. Mad. 42.—Hooper.

404. And where the Lower Appellate Court omitted to pronounce on the validity, or otherwise, of a document upon which the judgment of a Lower Court, reversed in appeal, was partly founded. *Sheikh Gholam Hosein* v. *Mohummud Huneef and others.* 29th Aug. 1849. S. D. A. Decis. Beng. 378.—Jackson.

405. And where the Judge had not conformed to the rule laid down in Act XII. of 1843, which requires that he should record "the points to be decided, the decision thereon, and the reasons for the decision." *Hurreekishen Ghose and others* v. *Rajnurain Koonwur and others.* 7th Nov. 1849. S. D. A. Decis. Beng. 426.—Jackson.

406. And where the defendant's plea of undervaluation of claim had not been investigated. *Sheikh Hosein Buksh and others* v. *Meer Mendie Hosein and others.* 18th Dec. 1849. S. D. A. Decis. Beng. 460.—Colvin.

407. And where the Collector had not been consulted in a suit involving a question as to holding land as *Lákhiráj*. *Nubeenchundur Mookerjee* v. *Ranee Jumoonakoonwary.* 27th Dec. 1849. S. D. A. Decis. Beng. 487.—Colvin.

408. And where it appeared that the special appellant had been prevented by circumstances beyond his control from producing before the Lower Courts certain documents material to the issue of the case.

Hanoomuntien v. *Curpana Serva Garen and others.* 31st Dec. 1849. S. A. Decis. Mad. 138.—Hooper.

409. And where the judgment pronounced by the Lower Courts had been founded entirely on the circumstance that the plaintiff's claim had been established in two former suits of a precisely similar nature, instituted by him against the petitioner. *Nursimmien* v. *Chowdary Vencata Iyen.*, 26th Feb. 1850. S. A. Decis. Mad. 15.—Hooper.

410. And where the appeal decree contained much irrelevant matter, and was in part recorded in a language not current in India, and unknown to the parties concerned in the suit. *Kader Meera Ravootten* v. *Ram Raj and another.* 26th Feb. 1850. S. A. Decis. Mad. 16.—Hooper & Morehead.

411. A suit was remanded where the Judge had recorded an opinion on a plea raised in a supplemental plaint, which he had declared unnecessary and unadvisable. *Manavicrama* v. *Congana Veetil Moideen Cooty.* 28th Feb. 1850. S. A. Decis. Mad. 17.—Thompson.

412. A case was remanded in consequence of the absence of any proceeding for the settlement of the issues in the case, according to Sec. 10. of Reg. XXVI. of 1814, notwithstanding that it was shewn that the defendant (respondent in the Sudder Dewanny Adawlut) had applied to the Lower Court, urging the necessity for such a proceeding, and had thus done all in his power to insure the observance of the law.[1] *Kowur Rodra Nund Singh* v. *Rajah Bydya Nund Singh and others.* 5th March 1850. S. D. A. Decis. Beng. 37.—Barlow, Colvin, & Dunbar.

413. Where in a claim for lands, and for a building, appropriated for purposes of worship according to the rites of the Roman Catholic church, situate thereon, the Lower Court had decided for the plaintiff on the ground of long possession, but without shewing in what capacity such possession was held, so as to give a title of suit to the plaintiff on the special ground laid in his action, the case was remanded in consequence of insufficient settlement of the issues under Sec. 10. of Reg. XXVI. of 1814. *Carew* v. *Jose Maria Brandas.* 8th May 1850. S. D. A. Decis. Beng. 181.—Barlow, Colvin, & Dunbar.

414. A case was remanded where the matter at issue depended in a great measure on the legality, or otherwise, of a will, and the opinion of the law officers on this point had not been taken. *Anon.* 18th March 1850. S. A. Decis. Mad. 19.—Thompson.

415. And where the opinion of the law officers had not been taken on a point of native law material to the case. *Mooneyummah and another* v. *Cundapah Chetty.* 28th March 1850. S. A. Decis. Mad. 21.—Hooper.

416. And where the precise averments and issues between the parties had not been duly ascertained and laid according to Sec. 10. of Reg. XXVI. of 1814. *Keyshubpooree* v. *Hijree Begum and others.* 3d May 1850. S. D. A. Decis. Beng. 181.—Dick, Jackson, & Colvin.

417. A proceeding under Sec. 10. of Reg. XXVI. of 1814 is not held to be absolutely defective, so as to require a remand, where the appellant can point out no important issue in the case which is not to be gathered from the proceeding as on the record.[2] *Mofeezul Hosein and others* v. *Ruttun Munee Surma and others.* 13th May 1850. S. D. A.

[1] And see the judgment in the case of *Srimut Moottoo Vijaya Raghanadha Gowery Vallabha Peria Woodia Taver* v. *Rany Anga Moottoo Natchiar.* 3 Moore Ind. App. 278.

[2] This has reference to decisions previous to the issue of the Circular Order No. 5 of the 8th May 1850.

Decis. Beng. 197.—Dick, Jackson, & Colvin.

418. A case was remanded on the ground that the facts, appearing on the face of the proceedings of the Lower Appellate Court, were not sufficient to fix a personal responsibility on the party appealing from its decision. *Kalee Kaunth Surmah* v. *Jogessur Ghosain.* 14th May 1850. S. D. A. Decis. Beng. 198.—Barlow & Dunbar.

419. A case was remanded, the Lower Appellate Court having set aside the Moonsiff's decision, and also the reports of two *Ameens*, without shewing distinctly on what grounds it did so. *Kartick Churn Dass* v. *Soorjmonee Goalee.* 21st May 1850. S. D. A. Decis. Beng. 219.—Barlow & Dunbar.

420. A case was remanded where a decision was passed by a Principal Sudder Ameen on the transfer of a regular appeal to his Court from that of a Principal Assistant in Assam, without notice to the appellant of the transfer, and in the absence of both the appellant and respondent. *Ghola Kara* v. *Dheeroo Kulleeta.* 29th May 1850. S. D. A. Decis. Beng. 244.—Barlow & Dunbar.

421. And where the investigation had been obviously insufficient, and its results not stated with sufficient clearness to enable the Appellate Court to deal with the case. *Anunt Lal* v. *Muddun Gopal and others.* 20th May 1850. S. D. A. Decis. Beng. 217.—Barlow & Dunbar. *Muharajah Juggunnath Sahee* v. *Pirdhan Shamsoonder Sahee.* 3d June 1850. S. D. A. Decis. Beng. 249.—Dick & Dunbar.[1]

422. And where a local custom in a part of Chota Nagpore, that the offspring of cohabitation have the rights of legal heirs, pleaded by the defendant, was not investigated. *Mukoond Singh and others* v. *Thakoor Pear Singh.* 6th June 1850. S. D. A. Decis. Beng. 270.—Barlow, Jackson, & Colvin.

423. And where the decision of the Lower Appellate Court appeared to have been given on points not raised by the defendant (appellant), either in his original or in the appeal pleadings. *Kalishunker Adit* v. *Bejoynurain Rajah.* 6th June 1850. S. D. A. Decis. Beng. 272.—Dick & Dunbar.

424. And where, in a claim on a deed of *Bay bil Wafá*, the decisions of the Lower Courts had been based on collateral evidence to the transaction, without the production of the deed itself, or any evidence that it had been lost.[2] *Toofun and another* v. *Purbhoodas.* 13th June 1850. S. D. A. Decis. Beng. 295—Barlow, Jackson, & Colvin.

425. And where the Lower Appellate Court had passed a decision on the merits of a case without having first determined the admissibility of the suit under the law of limitation, as pleaded by the appellant. *Sunhee Ram* v. *Goolab and another.* 18th June 1850. 5 Decis. N. W. P. 182.—Brown.[3]

426. And where written and material evidence for the plaintiff was not called for and considered by the Lower Courts. *Chalapoorathe Koyikkal* v. *Yeddapadikel Coonhayen Cootty and another.* 1st July 1850. S. A. Decis. Mad. 37.—Thompson.

427. And where an Appellate Court tried a case on its merits, after ruling that the Court of first instance had decided the case without jurisdiction. *Choonee Muhtoo* v. *Chinta Muhtoo and others.* 2d July 1850. S. D. A. Decis. Beng. 341.—Colvin & Dunbar.

428. And where the decree of the Lower Appellate Court reversed a

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[1] Many other cases to the same effect might be cited, but their enumeration is unnecessary.

[2] And see *supra*, Pl. 382.

[3] Circular Order of the 13th Sept. 1843. Many other cases might be adduced to the same effect, the point having been repeatedly decided.

decree, resting on the finality of a former judgment, without shewing on what grounds it held such former judgment not to be final as applicable to the suit. *Birjanund Dass* v. *Puddum Lochun Mundle.* 3d July 1850. S. D. A. Decis. Beng. 343. —Barlow & Colvin.

429. And where sufficient time was not allowed to a plaintiff to cause the attendance of necessary witnesses by means of a summons. *Bibi Syfun* v. *Sheikh Khyroo.* 10th July 1850. S. D. A. Decis. Beng. 352.—Dick & Colvin.

430. And where the appeal decree did not fully set forth the grounds for the reversal of the original decree. *Daserauze Mungaputty Row and others* v. *Chametecunty Ramasawmy Sastry.* 18th July 1850. S. A. Decis. Mad. 56.—Thompson.

431. And where the Lower Court had omitted to carry out the requirements of the Sudder Dewánny Adawlut as desired in a former remand. *Ramruttun* v. *Punchum and others.* 5th Aug. 1850. 5 Decis. N. W. P. 214.—Begbie, Deane, & Brown.

432. And where the Lower Court had omitted to consider and record the point at issue in the case, of whether the defendants were or were not *Shiáhs. Masoom Ali and another* v. *Mt. Mumonee and another.* 24th Aug. 1850. 5 Decis. N. W. P. 256.—Brown.

433. And where sufficient reason was shewn for an application to file in appeal certain documents which had not been filed in the Court of first instance. *Joynurain Bose* v. *Ununtram Banerjee.* 26th Aug. 1850. S. D. A. Decis. Beng. 427. —Jackson & Colvin.

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21. *Time.*

434. Unless the time when the cause of action arose be distinctly specified in the plaint, the plaintiff is liable to a nonsuit. *Matthews* v. *Meer Alee Buksh.* 23d Feb. 1847. 2 Decis. N. W. P. 53.—Thompson & Cartwright. (Tayler dissent.)[1]

435. The Court has no authority for admitting a suit to reverse a summary decision after a delay of nearly two years.[2] *Yar Mohummud Mundul and another* v. *Prosunoocomar Thahoor and another.* 30th June 1847. S. D. A. Decis. Beng. 290. —Dick, Jackson, & Hawkins.

436. A miscellaneous and interlocutory order passed upon a petition presented by the defendant, cannot be considered to constitute a commencement of that period within which, on failure to proceed, a case is liable to dismissal under Act XXIX. of 1841. *Mahomud Jehan Khan* v. *Prem Sookh and others.* 25th Aug. 1847. 2 Decis. N. W. P. 299.—Tayler, Begbie, & Lushington.

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22. *Suits by Paupers.*

437. Held, that a Zillah Court is bound, before admitting a party to sue *in formâ pauperis*, to hear the objections which may be urged by the opposite party. *Hume, Petitioner.* 21st Nov. 1834. 1 S. D. A. Sum. Cases, Pt. i. 2.—D. C. Smyth.

438. The possession of property by the husband is no bar to the institution of a suit *in formâ pauperis* on the part of the wife suing her father for her mother's dower. *Laloonissa Begum and another, Petitioners.* 15th Dec. 1845. 1 S. D. A. Sum. Cases, Pt. ii. 73.—Reid.

439. The Zillah Judge is alone competent to admit a supplemental plaint to be filed by a pauper plaintiff. *Hur Chundur Lahooree, Petitioner.* 25th Aug. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 83.—Reid.

439 *a.* A female Hindú, who is a

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[1] Mr. Tayler considered that it is not necessary that the exact date of the cause of action be stated in the plaint, but that the requisition of the law is observed when the plaintiff indicates the year.

[2] But see the case of *Anundee Ram Chuckerbuttee* v. *Hyder Allee.* 7 S. D. A. Rep. 21.

minor, cannot institute a suit *in formâ pauperis*, under Sec. 1. of Act IX. of 1839. *Adermani, Petitioner*. 1st Sept. 1846. 2 Sev. Cases, 363.—Reid.

440. A decree passed by the Lower Court in favour of a pauper plaintiff was reversed by the Sudder Dewanny Adawlut on discovery of property sufficient to nullify the fact of pauperism *quoad* the suit, in possession of the pauper plaintiff at the time when he instituted the suit. *Syud Sujait Ali* v. *Mt. Torab-o-Nissa Begum and another*. 7th Sept. 1846. 7 S. D. A. Rep. 279. —Rattray, Tucker, & Barlow.

441. The possession of property by the father is no bar to the admission of a suit *in formâ pauperis* on the part of a son against his father.[1] *Chuttoo Ram Tewaree, Petitioner*. 7th Sept. 1846. 1 S. D. A. Sum. Cases. Pt. ii. 85.—Reid.

441 *a*. Under Sec. 1. of Act IX. of 1839,[2] the Sudder Dewanny Adawlut, on a summary appeal, affirmed the orders of the Zillah Judge refusing the admission of the petitioner (suing as a daughter having a son, for property belonging to her father, though her mother was alive) to sue *in formâ pauperis* on the ground of there being no probable cause for the suit; as, by the Hindú law, in default of the father the mother inherits, though her interest is not absolute, and is of a nature similar to that of the widow. *Gobindmannee, Petitioner*. 14th Dec. 1846. 2 Sev. Cases, 357.—Reid.

441 *b*. The possession of a dwelling-house is no bar to the institution of a suit *in formâ pauperis*, provided it be proved satisfactorily that the petitioner, seeking the benefit of Reg. XXVIII. of 1814, is perfectly unable to defray the expenses of the suit. *Rasicklal, Petitioner*. 23d Feb. 1847. 2 Sev. Cases, 353.—Reid.

442. An application to sue *in formâ pauperis* was rejected, in consequence of contradictory statements made by the applicant, in regard to a point involved in the determination of the question as to whether there was probable cause for instituting the suit.[3] *Nowshere Ali Khan, Petitioner*. 11th Jan. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 89.—Reid.

443. Held, that the alleged heir, by will, of a deceased pauper plaintiff, must apply *de novo* for permission to sue as a pauper. *Alee Ashun, Petitioner*. 1st March 1847. 1 S. D. A. Sum. Cases, Pt. ii. 91.—Reid.

444. A male native of rank wishing to institute a suit *in formâ pauperis*, must appear in person for examination under Cl. 1. and 2. of Sec. 5. of Reg. XXVIII. of 1814, and cannot be examined through his agent. *Syed Mehdee Ali Khan and others, Petitioners*. 19th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 112. —Court at large.

445. A pauper plaintiff cannot be allowed to add to the number of the defendants originally sued by him, without their being allowed to shew cause against his right to sue *in formâ pauperis*. *Hurchunder Lahoree, Petitioner*. 26th July 1847. 1 S. D. A. Sum. Cases, Pt. ii. 112. —Hawkins.

445*a*. The proceedings of the Zillah Judge admitting pauper suits, must contain a record, *in extenso*, of the probable grounds for the institution of such suits. *Hursoondree Dasee, Petitioner*. 13th Dec. 1848. 2 Sev. Cases, 439.—Hawkins.

445*b*. It lies with the Zillah Judge in whose Court a petition to sue *in*

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[1] See also cases of *Mt. Ufzul Sultan, Petitioner*, 11th Sept. 1843, 1 S. D. A. Sum. Cases, Pt. ii. 52; and of *Laloonisa and another, Petitioners*, 15th Dec. 1845. *Ib*. 73.

[2] Act IX. of 1839, though a general law for the Bengal and Agra Presidencies, is inoperative in Her Majesty's Courts of Justice, as well as in the Company's Courts at Madras and Bombay.—Sev.

[3] Act IX. 1839, s. i.

formâ pauperis is presented, to *judge* as to there being a probable ground of action under Sec. 1. of Act IX. of 1839. *Hanumanpurshad, Petitioner.* 5th March 1850. 2 Sev. Cases, 519.—Colvin.

445*c*. And where, in a case to sue as a pauper, the Court below had ruled that the petitioner should be allowed to institute his suit for the recovery of certain property; it was held, by the Sudder Dewanny Adawlut, on summary appeal, that the direction of the Lower Court could not be interfered with. *Ibid.*

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23. *Decision by Oath.*

446. A judgment founded on the oath of one of the plaintiffs, taken with the consent of one of the defendants, having been reversed by the Lower Appellate Court, was upheld by the Sudder Dewanny Adawlut. *Mohummud Hosein and others* v. *Sheikh Meeah Jaun and others.* 26th Feb. 1848. S. D. A. Decis. Beng. 117.—Tucker, Barlow, & Hawkins. *Obhoy Raee* v. *Hooleet Raee.* 20th April 1848. S. D. A. Decis. Beng. 348.—Tucker.

447. The consent of the *Vakîl* of a party to abide by the oath of the adverse party is binding on his client.[1] *Ishwur Thakur and others* v. *Ughun Thakur and others.* 24th June 1848. S. D. A. Decis. Beng. 586.—Tucker, Barlow, & Hawkins. *Gookoolanund Raee and another* v. *Soonder Nurain Raee.* 15th May 1849. S. D. A. Decis. Beng. 151. —Barlow.

448. The refusal of defendants to agree to decide a case by oath, or even their non-observance of an agreement entered into by them for that purpose, is not alone a sufficient reason for deciding in favour of the plaintiffs. *Krisna Bhutter* v. *Gayatree Bhutter.* 22d April 1850. S. A. Decis. Mad. 25.—Thompson.

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24. *Withdrawal of Claim.*

449. Where the appellants had included in their appeal claim certain costs which had been decreed against them in the Court of first instance, but, before the appeal was decided, petitioned to withdraw so much of their claim as regarded such costs; it was held, that they were not therefore liable to be nonsuited, and that the withdrawal ought to have been permitted by the Judge, and the remainder of their claim inquired into. *Sahib Khanum and another* v. *Meer Hussun and others.* 9th Sept. 1846. 1 Decis. N. W. P. 154. —Cartwright.

450. Unless there exists some reason why a plaintiff should not be allowed to withdraw his claim *at all*, he is at liberty to withdraw a part of it by a verbal declaration.[2] *Mt. Bhowan Kuor and others* v. *Mt. Moolloo.* 30th May 1849. 4 Decis. N. W. P. 143.—Lushington.

PURCHASE MONEY.—See Interest, 4: Sale, 62 *et seq.*

PRE-EMPTION.

I. Hindú Law,[3] 1.
II. Muhammadan Law, 2.
 1. *Generally*, 2.
 2. *Demand*, 12.

I. Hindú Law.

1. The right of pre-emption does not exist under the Hindú Law, as

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[1] The same point was decided in the case of *Bajpie Rajah Gungesh Chunder* v. *Suroop Chunder Sirkar.* 7 S. D. A. Rep. 130. And see *supra*, Tit. Pleader, Pl. 6.

[2] And see *supra*, Tit. Mesne Profits, Pl. 19, 20, notes.

[3] See, as to the application of the law of pre-emption with regard to Hindús, *suprà*, Tit. Practice, Pl. 77 *et seq.* Where the right of pre-emption exists among Hindús, the Muhammadan law is applicable. See the case of *Mewa Lal* v. *Sooltan Singh.* 7 S. D. A. Rep. 129.

current in Madras, except in particular cases where there may be a mutual covenant or agreement between the shareholders of a village, to give each other that right; or where such right may be recognised by local custom.[1] *Kristnien* v. *Sendalungara Oodiar.* 3d Dec. 1849. S. A. Decis. Mad. 125.—Hooper.

II. Muhammadan Law.

1. *Generally.*

2. The right of pre-emption, decreed on condition of payment of the purchase-money within one month, was held to be lost by failure of payment within the time prescribed. *Shah Ahmed Alli, Petitioner.* 26th Dec. 1840. 1 S. D. A. Sum. Cases, Pt. i. 51.—Reid.

3. A purchaser of a portion of an estate is not barred from a right of pre-emption of another portion, on the ground that he himself had purchased only three years before the institution of his suit. *Umjud Ali* v. *Sham Lal and others.* 7th May 1846. S. D. A. Decis. Beng. 176. —Rattray, Tucker, & Barlow.

4. The resumption of lands by Government, and a settlement made with a purchaser of a portion of an estate, does not bar the right of pre-emption in the possessor of another portion. *Ibid.*

5. A sale or mortgage of an estate to a third party, by one of the co-sharers in such estate, being in infraction of the *Wájib ul Arz* in the Collector's office, by which the vendor and sharers bound themselves not to sell the estate to a stranger without first endeavouring to obtain a purchaser among their co-sharers, is insufficient to give one of the sharers a right of pre-emption if he have forfeited that right by a refusal to purchase at a fair valuation. *Banee Dyal and another* v. *Gouree Shunker.* 11th Aug. 1847. 2 Decis. N. W. P. 249.—Tayler.

6. The parties to a sale may cancel the contract between themselves, but their annulment of a sale which has been completed cannot set aside the right of a third party to pre-emption. *Mt. Uzeemun* v. *Nizam Begum and others.* 8th Feb. 1848. 3 Decis. N. W. P. 47.—Tayler, Thompson, & Cartwright.

7. The *Málik* of a resumed rent-free tenure, which has been settled with the *Maafídár,* has not the right of pre-emption, on sale of the property by the latter. *Omrao Singh and others* v. *Sukhawut Hosein and others.* 30th Dec. 1848. 7 S. D. A. Rep. 561. — Barlow, Jackson, & Hawkins. *Thakoor Singh and others* v. *Chowdhree Dowlut Singh and others.* 9th Aug. 1849. S. D. A. Decis. Beng. 344.—Dick, Barlow, & Colvin.

8. A party having been *Málik* of certain land, formerly an *Altamghá* grant, and afterwards constituted a *Mahâll,* or estate permanently settled with those who were the rent-free

[1] The Law Officers observed in their *Vyavashta,* given in this case, as follows—"The chapter on 'the non-performance of agreements' contained in the code of the Hindoo Law, referring to the resolutions or agreements which may be formed by the king, or by the inhabitants of a village, declares that such resolutions shall be acted upon, and that, should a departure from them be attempted, they shall be enforced by the king. In cases, therefore, where there exists a resolution in a village to the effect that a shareholder in such village should sell his land only to another shareholder of the same village, if an inhabitant intends to sell his estate to a stranger, or to the inhabitant of another village, the other inhabitants of the village where the estate in question is situated are competent to claim the right of pre-emption of such estate. But with regard to the period within which such demand and protest must be made, the chapter above referred to does not propound any rule or restriction whatever. We are, however, of opinion, that all those rules and restrictions, which obtain in regard to the preferment of the claims of aggrieved parties in general, must extend to the instance alluded to." The chapter adverted to by the law officers will be found in 2 Coleb. Dig. 285.

holders of the said grant, has no right of pre-emption; the permanent Settlement of the land, as a separate estate, completely separating the property from the *Málik*, who in futurity had no further concern in the land, in lieu of which he was entitled to receive a money allowance from the Government Treasury. *Thakoor Singh and others* v. *Chowdhree Dowlut Singh and others.* 9th Aug. 1849. S. D. A. Decis. Beng. 344. —Dick, Barlow, & Colvin.

9. Where the Sudder Board, in a certain letter, had declared that when a *Butwárá* of the estate had been properly carried out under the law, a claim of pre-emption would not lie; it was held, that such letter was no authority for setting aside the Muhammadan law in a suit brought to set aside the sale of the estate under the provisions of that law, with regard to the right of pre-emption. *Sheikh Gholam Mohumed* v. *Dhoolchund and others.* 3d May 1849. 4 Decis. N. W. P. 103.—Thompson.

10. A right of pre-emption cannot be claimed previous to actual sale.[1] *Purbhoo Rae* v. *Bhekun Rae.* 22d April 1848. 7 S. D. A. Rep. 487.—Tucker, Barlow, & Hawkins. *Bheeka Singh* v. *Chutta Singh and others.* 23d July 1850. 5 Decis. N. W. P. 189.—Begbie, Deane, & Brown.

11. A party whose house is in the same compound, or inclosure, as the one sold (both having a common entrance through the inclosure) has a superior right of pre-emption to another party whose house adjoins the one sold, but is separated from it by a wall.[2] *Mohummud Ali* v. *Ramdyal and others.* 26th Dec. 1850. S. D. A. Decis. Beng. 602. —Dick, Barlow, & Colvin.

2. *Demand.*

12. By the Muhammadan law, a claimant for right of pre-emption is bound to bring forward his claim immediately on hearing of the sale; and the notice of a year issued previously to a conditional sale becoming absolute, was held to be a sufficient notification to all parties concerned, and to preclude a party from claiming a right of pre-emption unless immediately after such sale had become absolute. *Bhyroo Chunder and others* v. *Hurwuttee Ram.* 25th Jan. 1847. S. D. A. Decis. Beng. 22.—Rattray, Dick, & Jackson.

13. A claim for right of pre-emption under the Muhammadan law, was disallowed on failure of proof that the *Talab-i-Muwásabat*, or immediate demand, had been made by the claimant.[3] *Syud Moyenooddeen Hosein and others* v. *Sheikh Iktaramooddeen Hosein and others.* 19th July 1847. S. D. A. Decis. Beng. 267.—Tucker, Barlow, & Hawkins.

14. A claim to the right of pre-emption was dismissed, the "immediate demand" required by the Muhammadan law not being proved.[4] *Birjrung Sahaee* v. *Munraj Singh and others.* 17th June 1848. S. D. A. Decis. Beng. 533.—Tucker, Barlow, & Hawkins. *Azmeree Singh and others* v. *Thakoornath Singh.* 22d July 1848. S. D. A. Decis. Beng. 709.—Tucker, Barlow, & Hawkins.

15. It is sufficient that the right of pre-emption has been demanded before witnesses from one of several sellers, and the presence of all the sellers is not necessary to render the assertion of such right legal and formal.[5] *Gunjput Jha* v. *Anund Singh Das.* 17th Jan. 1848. 7 S. D. A. Rep. 424.—Rattray, Jackson, & Currie.

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1 Macn. Princ. M. L. 196.

2 3 Hed. 562—564.

3 See Macn. Princ. M. L. p. 48, r. 7. And see Vol. I. of this work, Tit. Pre-emption, Pl. 20. 23.

4 Macn. Princ. M. L. 183.

5 Macn. Princ. M. L. 182. Where the right of pre-emption exists among Hindús, it is subject to the rules and regulations of the Muhammadan Law. See the case of *Mewa Lal and others* v. *Sooltan Singh and another.* 7 S. D. A. Rep. 129.

16. A party claiming on a right of pre-emption must, according to the Muhammadan law, prefer his claim, founded on that right, *immediately* on knowledge of the sale, *however acquired*. *Girwur Nurain Singh and others* v. *Motee Lál and others*. 4th April 1850. S. D. A. Decis. Beng. 99.—Dick, Barlow, & Colvin.

17. The *immediate claim* to a right of pre-emption is not restricted to any particular form of words; and it was held sufficient to establish such claim where the claimant, immediately on hearing of the sale, cried out *Kharíd Kiyá* three times. *Khooblal Singh and others* v. *Sheodyal Mehtoon*. 27th June 1850. S. D. A. Decis. Beng. 321.—Barlow, Jackson, & Colvin.

18. Where a claimant to a right of pre-emption, immediately on hearing of the sale, sent several persons with the money to be tendered to the vendor and purchaser, and to demand the delivery of the deed of sale; it was held, that all but the actual agent so sent to make the tender were witnesses in the legal sense of the word; *i. e.* persons sent to see the tender made, and who did see the tender made, and deposed to having seen it. *Ibid.*

19. If the immediate demand and tender of price be made to one of several joint sellers, or purchasers, it is good in law. *Birj Beharee Singh and others* v. *Durbaree Lal and others*. 23d Dec. 1850. S. D. A. Decis. Beng. 585.—Dick, Barlow, & Colvin.

PRESCRIPTION.—See Inheritance, 16 *et seq.*; 32, 33.

PRESUMPTION. — See Evidence, 30 *et seq.*

PRIEST.

1. The Civil Courts will entertain a suit for compelling one man to employ another as *Purohit*, according to the hereditary custom of the family. *Kalichurn Raee and others* v. *Hurree Kisto Ghose and others*. 15th June 1848. S. D. A. Decis. Beng. 532.—Tucker.

2. *Jujmáns*, requiring any religious ceremonies to be performed for their benefit by any *Purohit* are at liberty to choose the *Purohit* whom they may prefer for that purpose, and no other *Purohit* can, as a right, claim a share in the fees paid, either from the *Jujmáns*, or from the *Purohit* who received the fees. *Hurgobind Surma and others* v. *Bhowaneepersaud Shah and others*. 13th June 1850. S. D. A. Decis. Beng. 296.—Barlow, Jackson, & Colvin.

PRIMOGENITURE. — See Inheritance, 16 *et seq.*

PRINCIPAL AND AGENT.— See Agent, *passim.*

PRINCIPAL MONEY, FORFEITURE OF. — See Usury, *passim.*

PRINCIPAL SUDDER AMEEN.

I. Generally, 1.

II. Jurisdiction of.—See Jurisdiction, 94 *et seq.*

I. Generally.

1. Where a Principal Sudder Ameen, being ignorant of the English language, sent for the writer of the Judge's office, and submitted certain documents, material to a case before him, to his examination, and acted on his opinion by proceeding to ad-

judication of the case; it was held, that he should have reported the case to the Zillah Judge for his decision, instead of proceeding with it himself.[1] *Ramsoonder Raee* v. *Bhooloo Sircar and others.* 23d March 1848. S. D. A. Decis. Beng. 224.—Hawkins.

PRIVATE PARTITION. — See PARTITION, 6 *et seq.*

PRIVITY TO MURDER.—See CRIMINAL LAW, 59.

PRIVITY TO THEFT.—See CRIMINAL LAW, 60.

PROBATE.—See EXECUTOR, 2. 6. 8; JURISDICTION, 6.

PROCESS.—See PRACTICE, 83.

PROFITS.—See MESNE PROITS *passim.*

PROCLAMATION.—See PRACTICE, 161, 162.

PROCLAMATION OF ATTACHMENT.—See SALE, 7.

PROCLAMATION OF SALE.—See SALE, 16. 58 *et seq.*

PROMISSORY NOTES. — See BILLS AND NOTES *passim.*

[1] And see *supra*, Tit. PRACTICE. Pl. 396.

PROSTITUTE.

I. GENERALLY, 1.
II. INHERITANCE OF.—See INHERITANCE, 9.

I. GENERALLY.

1. The Court will not entertain a claim for reimbusement of the expenses incurred in preparing a woman for the profession of a prostitute. *Mt. Luchmee* v. *Mt. Mooneya and another.* 10th Sept. 1850. 5 Decis. N. W. P. 308.—Begbie, Deane, & Brown.

2. The wages of prostitution are not recoverable in a Civil Court.[2] *Sutaoo Kusbin* v. *Hurreeram Bin Ramchunder.* 13th Feb. 1835. Bellasis, 1.—Anderson, Henderson, & Greenhill.

PUBLICATION.—See DEFAMATION, 4.

PUNCHAYUT. — See ARBITRATION, 7. 17. 19. 35; JURISDICTION, 47; RELIGIOUS ENDOWMENT, 1.

PURCHASER.—See SALE, *passim.*

PUROHIT.—See PRIEST, 1, 2.

PUTNÍ.—See PATNÍ.

PUTNÍDÁR.—See PATNÍDÁR.

PUTTÍDÁR.—See PATÍDÁR.

[2] This decision was given in the face of, and contrary to, a *Vyavashta* declaring that such wages were recoverable according to the Hindú Law.

PUTRA BHÁGA.—See PARTITION, 4 NOTE.

RAPE.—See CRIMINAL LAW, 184.

RÁZÍ NÁMEH.—See COMPROMISE, 4, 5; EVIDENCE, 20.

REBELLION.—See CONFISCATION, 2, 3; CRIMINAL LAW, 61.

RECEIPT.—See EVIDENCE, 97. 107; SALE, 105.

RECEIVER.

I. IN THE COURTS OF THE HONOURABLE COMPANY, 1.

II. IN THE SUPREME COURTS.—See EXECUTION, 1, 2; PRACTICE, 31 *et seq.*

I. IN THE COURTS OF THE HONOURABLE COMPANY.

1. It is not necessary to issue to the new officer fresh notice in a case to which the Receiver of the Supreme Court may be a party, on change of the official incumbent. *Kalee Shunker Buxee and others, Petitioners.* 18th March 1845. 1 S. D. A. Sum. Cases, Pt. ii. 66.—Reid.

2. When the receiver of the Supreme Court represents a plaintiff in a case, notice should be issued to the plaintiff on a change of officers. *Macpherson* v. *Muha Rajah Kishen Kishwur.* 28th Dec. 1848. S. D. A. Decis. Beng. 890.—Jackson.

3. The official receiver of a minor's estate, against which a claim is set up, is liable, as well as the guardian. *Receiver of the Supreme Court* v. *A. Ter Thaddeus Nekose.* 10th May 1849. S. D. A. Decis. Beng 144.—Dick, Barlow, & Colvin.

RECEIVING STOLEN OR PLUNDERED PROPERTY.—See CRIMINAL LAW, 62, 63.

REDEMPTION.—See MORTGAGE, 32 *et seq.*

REFERENCE.

I. GENERALLY, 1.

II. TO THE REVENUE AUTHORITIES.—See LAND TENURES, 1. 4, 5. 6*a*.

III. TO THE MASTER.—See MORTGAGE, 5.

I. GENERALLY.

1. In a suit on a bond, the plaintiff consented to withdraw his claim if the defendant would cancel the signature on the bond by drawing his pen through it. The bond was accordingly sent to the defendant, who denied the signature, but did not "cut it out," as required by the plaintiffs. Held, that a second reference to the defendant, for the same purpose, without the plaintiff's consent, was not binding on the plaintiff. *Bijeeram and another* v. *Seth Biddee Chund.* 2d June 1847. 2 Decis. N. W. P. 155.—Lushington.

2. Where the parties to a suit had agreed to abide by the declaration of certain persons to be taken on reference by the Court; it was held, that a *repetition* of the reference, on account of the Court deeming the first answer to be insufficient, could not be looked upon as a *second* or *new* reference, or be objected to by either of the parties on the ground of non-consent. *Mt. Faheemoonnissa* v. *Mt. Lutteefoonnissa.* 28th Feb. 1848. 3 Decis. N. W. P. 66.—Tayler, Thompson, & Cartwright.

REGISTRAR.—See EXECUTOR, 1. 5; GUARDIAN, 10.

REGISTRY.

I. Of Proprietary Right, 1.
II. Of Deeds.—See Deed, 14.
III. Of Mortgages.—See Mortgage, 70 *et seq.*
IV. Of Ships.—See Ship, 4, 5.

I. Of Proprietary Right.

1. The mere fact of non-registry as proprietors of an estate in the books of the Collector's office cannot, in a claim for right of Settlement, invalidate or outweigh the fact of long possession in the plaintiffs, as recognised *Máliks*. *Buniad Singh and others* v. *Sudashibdutt and others.* 15th Aug. 1850. S. D. A. Decis. Beng. 406.—Dick, Barlow, & Colvin.

REGULATIONS.

I. Bengal Code, 1.
II. Madras Code, 4.

I. Bengal Code.

1. The provisions of Cl. 3. of Sec. 2. of Reg. I. of 1820, by which the Rules contained in Sec. 9. (amongst others) of Reg. VIII. of 1819, are extended to all sales made after the manner provided for by the said Reg. I. of 1820, are not applicable to an under-tenure, which is neither a *Putní* tenure, nor one of the nature described in Cl. 1. of Sec. 8. of Reg. VIII. of 1819, to which alone Reg. I. of 1820 has reference. *Mt. Cassee Perea* v. *Scott and others.* 27th June 1850. S. D. A. Decis. Beng. 324.—Barlow, Jackson, & Colvin.

2. The provisions of Reg. XI. of 1822 do not apply to *Patní* sales, nor do those of Sec. 29. of Reg. VII. of 1799, since annulled. *Sham Chund Bose* v. *Dyal Chund Bose.* 12th Nov. 1845. S. D. A. Decis. Beng. 412.—Reid, Dick, & Jackson.

3. Sec. 16. of Reg. VII. of 1832 refers to *Patní Talooks* and similar tenures, and not to sales in satisfaction of summary awards by the Civil Court. *Rajah Sutchurn Ghosaul* v. *Gourkishore Biswas.* 29th July 1848. S. D. A. Decis. Beng. 726. —Tucker, Barlow, & Hawkins.

3*a*. Held, that the provisions of Sec. 25. of Reg. IV. of 1793 apply only to forcible resistance. *Krishenchandra Chakrabutti, Petitioner.* 16th March 1850. 2 Sev. Cases, 533.—Colvin.

II. Madras Code.

4. An estate assessed with revenue by the Collector according to the principle laid down in Sec. 9. of Reg. XXV. of 1802 does not come within the provisions of Sec. 12. of the same Regulation, which declares that proprietors shall not appropriate any part of an estate, permanently assessed, to any purposes by which it may be intended to exempt such lands from bearing their portion of the public tax, unless the consent of Government shall have been previously obtained for that purpose. *Goureevullabha Taver* v. *Sreematoo Rajah and others.* 8th Nov. 1849. S. A. Decis. Mad. 102.—Thompson & Morehead.

5. Sec. 2. of Reg. IV. of 1831 refers to grants of money or land revenue conferred by the Government, and does not operate in bar of suits instituted for the recovery of lands held from *Jágírdárs*. *Vencata Row and another* v. *Ragoonda Row.* 29th Aug. 1850. S. A. Decis. Mad. 65. — Thompson & Morehead.

RELIGIOUS ENDOWMENT.

I. Hindú, 1.
1. *Generally*, 1.
2. *Lands duly endowed cannot be alienated*, 4.
3. *Superintendence*, 7.

II. Muhammadan, 18.
1. *What constitutes Wakf*, 18.
2. *Alienation of endowed lands*, 20.
3. *Superintendence*, 22.

I. Hindú.

1. *Generally.*

1. No prescriptive, hereditary, or other right to the offices connected with *Pagodas* in Tanjore, is lodged anywhere but in the Government, who authorise the appointment of *Pancháyits*, by whom the interior economy of the *Pagodas*, their receipts and disbursements, and the appointment and dismissal of all servants, is to be regulated.[1] *Sashiengar* v. *Cotton and others.* 27th Sept. 1849. S. A. Decis. Mad. 64.—Thompson & Morehead.

2. On the division of an estate, where it was not shewn that any particular lands had been expressly set aside for the support of the family charities, but only that such portion of the produce as could be spared from the wants of the family were annually appropriated to this purpose; it was decided, that no part of the estate could be withheld from the general division, on the score of alienation for charity.[2] *Appasawmy Vandiar and others* v. *Streenewasa Charry.* 25th Oct. 1849. S. A. Decis. Mad. 80.—Morehead.

3. Held, that the acts done by a Collector during his management of a *Pagoda* under Reg. VII. of 1817 cannot negative the claims of parties to hereditary rights to offices in such *Pagoda*, or preclude them from seeking to establish such rights by a Civil action. *Doddacharryar and another* v. *Paroomal Naicken and others.* 31st Oct. 1850. S. A. Decis. Mad. 98.—Thompson & Morehead.

2. *Lands duly endowed cannot be alienated.*

4. Reg. VII. of 1817 does not expressly prohibit a mortgage of *Pagoda* lands for the benefit of the *Pagoda*, but merely provides for the due appropriation of the rents and produce of lands belonging to religious establishments, and is intended to guard against their being alienated or misappropriated to the personal use of individuals in charge or possession thereof, contrary to the original intention of the donors or founders. *Errumbala Chundoo* v. *Coomery Chatoo and others.* 6th Sept. 1849. S. A. Decis. Mad. 53.—Hooper.

5. Semble, a house dedicated to *Mahábír* is inalienable, and for ever set apart for purposes of religion; but if a part only of a house be devoted to the reception of an image, the other portions continuing to be occupied, the proprietor may dispose of those other portions in whatever way he pleases, because, in that case, the sacred influence of the image would not extend beyond the precincts which it immediately hallowed. *Hurnarain* v. *Gobindram.* 23d Sept. 1850. 5 Decis. N. W. P. 354.—Begbie, Lushington, & Deane.

6. An alienation of the property attached to a religious endowment, as though it were private property, and without a provision for the duties appertaining to the care of the endowment, is altogether illegal. *Mohunt Gopal Dass* v. *Mohunt Kerparam Dass and another.* 3d June 1850. S. D. A. Decis. Beng. 250.—Barlow, Jackson, & Colvin. *Mohunt Kumulperkash Dass* v. *Mo-*

[1] This was the recorded opinion of Mr. Kindersley, formerly Principal Collector of Tanjore, and was quoted by the Court as the ground of their decision in this case.

[2] The Court, however, expressly stated, that the division was not to extend to the charitable buildings, which were adjudged to remain, as before, in charge of the head of the family; the plaintiff in the case, who sued for his share, being at liberty to contribute his quota to their support if he thought fit.

hunt Jugmohun Dass. 26th Sept. 1850. S. D. A. Decis. Beng. 532. —Barlow, Jackson, & Colvin.

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3. *Superintendence.*

7. In a claim to the office of presiding *Muhant* of a *Muth* at Jaggernath, misappropriation of its property and funds by the plaintiff, although not disqualifying him according to the Hindú law, was held to bar his title under Reg. XIX. of 1810. *Ram Churn Das* v. *Chuttur Bhoje and another.* 13th May 1845. 7 S. D. A. Rep. 205.—Dick.

8. Held, that the local agents appointed under Reg. XIX. of 1810 could not, under the circumstances, *of their own authority* remove an incumbent from his office of superintendent of a Hindú religious institution on account of alleged disqualification. *Local Agents of Zillah Hooghly* v. *Kishnanund Dundee.* 28th March 1848. 7 S. D. A. Rep. 476.—Jackson.

9. A superintendent of a religious establishment is not disqualified for his office because he has been convicted before the magistrate of entering a house at night in a turbulent manner, and fined, nor because he cohabits with his *Guru's* daughter and harbours *Dakoits.*[1] *Ibid.*

10. A *Dharmakurta* of a *Pagoda* is not bound to obtain a decree of Court before he can proceed to remove an unfit or improper person from any of the situations attached to the *Pagoda* under his exclusive management: he must, in such cases, however, act upon his own responsibility, and it is for the party removed to seek redress in the Civil Court, should he consider that he has just cause of complaint.[2] *Raghavacharry* v. *Yavaluppa Moodelly.* 1849. S. A. Decis. Mad. 37.—Thompson & Morehead.

11. One of several *Uralers,* not being sole *Uraler* and Manager of a *Pagoda,* cannot legally mortgage the *Pagoda* lands without the knowledge and consent of the other *Uralers. Errumbala Chundoo* v. *Coomery Chatoo and others.* 6th Sept. 1849. S. A. Decis. Mad. 53.—Hooper.

12. But semble, that had the mortgage been made with the consent of all the *Uralers,* and for the benefit of the *Pagoda,* such temporary transfer of the lands is not objectionable or contrary to the Regulations. *Ibid.*

13. In a suit for possession of land occupied by religious mendicants, the Court, admitting that the plaintiffs might have been, to a certain extent, the *Muhants* of a religious community, refused to give a decree to them for possession of the land, no proof being adduced that such land had ever been appropriated to the use of that community. *Nischul Dass and others* v. *Monee Jee.* 5th Feb. 1850. 5 Decis. N. W. P. 30. —Tayler, Begbie, & Lushington.

14. In a claim for the superintendence of a religious endowment, no acknowledgment by any individual can do away with the necessity of proof of due nomination, according to the rules and usages of the endowment. *Mohunt Gopal Dass and another* v. *Mohunt Ker-*

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[1] In the case of *Mohunt Rama Nooj Das* v. *Mohunt Debraj Das,* 6 S. D. A. Rep. 262, the Court decided that the plaintiff was not disqualified by a criminal conviction of theft, and a sentence of three years' imprisonment. In that case the *Pandit,* on the Court's requisition, gave a detailed list of the causes of disqualification. See 6 S. D. A. Rep. 269; Menu B. IX. v. 201; B. XI. 55; Mit. c. ii. s. x. l. 3. They are, in fact, the same disqualifications which bar the right of inheritance.

[2] A *Dharmakurta* is usually appointed by the people of the district in which the *Pagoda* is situated. The control of the *Dharmakurta* extends to the entire management of all the affairs of the *Pagoda,* and in the exercise of this power he is left unrestricted both by the Hindú Law and the Regulations.

param Dass and another. 3d June 1850. S. D. A. Decis. Beng. 250.—Barlow, Jackson, & Colvin.

15. Where the evidence establishes a custom of public acknowledgment, by an assembly of *Mohants* and others, of a party nominated to the charge of a religious endowment, no appointment by an incumbent of a successor to such charge will be valid in the absence of such acknowledgment. *Ibid.*

15 *a.* Held, that although the superintendent of the temple of Jaganath may, under Act X. of 1840, prevent his servants from interfering with the conduct and management of its affairs, yet he has no power to prevent their entering the temple for purposes of worship. *Maharaja Ram Chandra Deo, Petitioner.* 13th June 1850. 2 Sev. Cases, 571.—Dick.

16. Held, that a *Guru* at Chittoor, regularly succeeding to the office, could not eject a party from the management of a *Muth,* where it was proved that such management had been in the hands of such party and his ancestors for upwards of a century.[1] *Anunta Charry* v. *Seetiah Paramaswamy.* 18th July 1850. S. A. Decis. Mad. 52.—Hooper & Freese.

17. A suit by the heir of a party who had made over land as a religious endowment, for the removal of a *Shiwáit* on the ground that he had pledged the endowed land for private purposes, was dismissed, as the said heir was proved to have been guilty of similar misconduct. *Beejaye Gobind Burral* v. *Kallee Dass Dhur and another.* 28th Aug. 1850. S. D. A. Decis. Beng. 447.—Dick, Barlow, & Dunbar.

[1] The evidence as to the original construction of the *Muth* was contradictory, some witnesses for the *Guru* stating that, by traditionary report, they knew the *Muth* to have been established by the ancestors of the manager, whilst others affirmed, on similar grounds, that the institution had been founded by a former *Guru.* It appeared that a considerable degree of deference and submission to the authority of the *Guru,* as the spiritual head of the cast, had been acknowledged and conceded, and on that ground that party had claimed the right of absolute dismissal of the manager; but the Court did not consider such right to be legally established.

II. Muhammadan.

1. *What constitutes Wakf.*

18. *Makbarah,* or burying-ground, is *Wakf,* and consequently cannot be alienated. *Mt. Azeezoonnissa Begum* v. *Nundhee Mull.* 15th Dec. 1846. 1 Decis. N. W. P. 250.—Tayler, Thompson, & Cartwright.

19. An inclosure, answering the purpose of a rude wayside mosque, was proved by the evidence to have stood on certain ground forty years before the action was brought for possession of the land. Held, that the purpose for which the land was originally appropriated ceased with the disappearance of the building; and no claim to it as *Wakf* having been brought forward within twelve years from the date of the defendant's possession, the suit became subject to the general law; and that the *Wakf* impropriation under the circumstances having virtually determined, the possession could not have been a wrongful one. *Allahoudee Khan* v. *Dhurmraj.* 14th Feb. 1850. 5 Decis. N. W. P. 38.—Tayler, Begbie, & Lushington.

2. *Alienation of endowed lands.*

20. The alienation, temporary or absolute, by mortgage or otherwise, of *Wakf* lands, though for the repair or other benefit of the endowment, is illegal according to the Muhammadan law. *Moulvee Abdoolla* v. *Mt. Rajesri Dossea and another.* 19th July 1846. 7 S. D. A. Rep. 268.—Tucker, Reid, & Barlow.

21. Where *Ryotí* holdings of *Wakf* lands have been habitually

sold by the *Ryots* under former *Mutawallis,* such right of transfer must be respected by their successors, until cancelled by an action at law. *Moulvee Ubdoollah* v. *Rumzoo Dye.* 5th June 1847. 7 S. D. A. Rep. 311.—Tucker, Barlow, & Hawkins.

3. *Superintendence.*

22. Where the plaintiffs stated that the property alluded to in their plaint was long ago given in *Wakf* by their ancestors, and that all they had to do with it at the time of bringing their suit was to superintend its interior economy, and to appoint proper persons to take care of it; it was held, that they were entitled to sue for the *Tauliyat* or management of the property, instead of for any proprietary right in the property itself. *Munnoo Lall and others* v. *Ramanund.* 23d May 1846. 1 Decis. N. W. P. 68.—Cartwright.

23. Where a claim to the *Makándári* of a mosque had been referred for arbitration to the Rajah's Court at Tanjore in 1811, and it was decreed that the right to manage the affairs of the mosque vested in whomsoever *A*, the descendant of the original founder, might see fit to appoint, and *A*'s appointee, as was proved by the evidence, had been recognised as the successor of *A* in right of *A*'s nomination; the Court of Sudder Adawlut upheld the right of such appointee in preference to that of another claimant, who rested his title on his having been the disciple and nominee of *A*'s predecessor. *Goolsar Shah Faqueer* v. *Hazarut Cassim Ali Shah Kaudery.* 29th Aug. 1850. S. A. Decis. Mad. 57. —Morehead.

24. Where a party had been put in possession of a mosque by the Collector, under the orders of the Provincial Court, from which orders an appeal had been preferred; it was held, that it was to be inferred that the Collector was satisfied that, in so far as he had occasion to interfere, these orders were in no way opposed to the spirit and intentions of Reg. VII. of 1817, and consequently that he had assented to such party's title to manage the mosque, and that the Judge, under such circumstances, was not competent to remove such party from the *Makándári* of the mosque in question. *Cazee Syed Ali Mahomed Shereef* v. *Khadir Ali Shah.* 30th Sept. 1850. S. A. Decis. Mad. 80.—Hooper & Morehead.

RELINQUISHMENT, DEED OF.—See Deed, 5. 8. 11.

RELINQUISHMENT OF CLAIM.

1. Where a party sued in the first instance as widow of a Hindú and as mother of her adopted son, and, on appealing from a nonsuit, claimed to be heard as widow according to the *Shastras,* as devisee under a deed of *Anumati pati,* and as heir of her adopted son; it was held, that as she never gave up her claim as widow, though she was preferring a claim to be heard as mother also of her adopted son, equity required that she should be allowed to prosecute her claim on the former ground, her right as widow having been acknowledged by the Courts, though the adoption was adjudged invalid. *Mt. Soondur Koonwaree Dibeeah* v. *Gudhadur Purshad Teewaree.* 29th July 1845. S. D. A. Decis. Beng. 250.—Dick.

2. In a suit for a sum of money paid by the plaintiff to the Collector for revenue of the year 1250, and in excess of the sum due from him under his engagement with the *Zamíndár,* and the plaintiff had not advanced his claim for such excess payment in the year 1251, when an adjustment of mesne profits up to the year 1249 was made; it was held, that such circumstances could not be

regarded as an abandonment of any right the plaintiff might have in respect of such excess payment on account of the increased *Jama*. *Bell* v. *Muha Koonwur and another*. 29th Dec. 1848. 3 Decis. N. W. P. 427.—Tayler.

3. When the legal heir is alleged to have relinquished his right of inheritance in favour of a collateral heir, he should be made a defendant. *Deep Chund Sahoo and others* v. *Hurdeal Singh*. 14th June 1849. S. D. A. Decis. Beng. 204.—Dick, Barlow, & Colvin.

4. An admission by a Hindú widow that certain parties were the rightful heirs to her husband's property, does not imply her abandonment of her own life interest in such property. *Lukhiprea Dassee* v. *Sheosundri Dassee and others*. 13th Dec. 1849. S. D. A. Decis. Beng. 457.—Barlow, Colvin, & Dunbar.

5. A childless Hindú widow, having formally relinquished by deed her claim over her husband's estate, in consideration of a certain allowance of money and land to her brother-in-law and *his heirs* (*Wárisán*), endeavoured to re-assert her claim to the estate when her brother-in-law died childless, on the plea that his widows were not heirs within the meaning of the deed. Her claim was rejected, the relinquishment having been in favour of her brother-in-law and his heirs generally, not of him and the heirs of his body or collateral male heirs only, and the widows being his heirs during their life, and trustees for the ultimate heirs. *Mt. Noomurtoo* v. *Mt. Doorga Koonwur and others*. 29th May 1850. S. D. A. Decis. Beng. 245.—Dick, Jackson, & Colvin.

RELINQUISHMENT OF PURCHASE.—See SALE, 48 *et seq.*

REMANDING CASES. — See PRACTICE, 353 *et seq.*

RENT.—See ACTION, 24. 59, 60. 93. 95, 96. 98. 103. 106. 116; ASSESSMENT, *passim*; INTEREST, 17 *et seq.*; LAND TENURES, *passim*.

RENT-FREE TENURES.—See LAND TENURES, 1 *et seq.*

RENUNCIATION.—See DEED, 5. 8. 11; RELINQUISHMENT, *passim*; SALE, 48 *et seq.*

REPLICATION. — See PLEADING, 26 *et seq.*; PRACTICE, 205 *et seq.*

REPRESENTATION.—See APPEAL, 72*a*; CERTIFICATE, 1, 2; PRACTICE, 132 *et seq.*

RESISTANCE OF PROCESS. —See REGULATIONS, 3*a*.

RESPONDENTIA.—See INSURANCE, 4.

RESTORATION OF APPEAL. —See APPEAL, 55 *et seq.*

RESTRAINT OF TRADE.

1. A covenant by a Calcutta trader not to carry on his trade within the presidency of Bengal was held to be void, as being a covenant in general restraint of trade. *Teil* v. *Teil*. 26th May 1846. Montriou, 183.

RESUMPTION.

I. GENERALLY, 1.
II. SUITS FOR.—See PATNIDÁR, 7. 11.
III. OF LÁKHIRÁJ LANDS. — See LAND TENURES, 3. 5*a*. 7.

10 *et seq.*, 25; LIMITATION, 38 *et seq.*

I. GENERALLY.

1. *A* built a house in a *Koorikanom Paramba* rented to him by *B*, and subsequently disposed of his *Koorikanom* right, with the house, to *C*. Held, that on the resumption of the *Paramba* by *B*, *C* was entitled, according to the practice and usages observed in such cases in Malabar, to be reimbursed the value of the house built on *B*'s land. *Coonoomal Coonhy Cootty* v. *Coodelen Oomiya*. 27th Sept. 1849. S. A. Decis. Mad. 62.—Hooper.

RESUMPTION COURTS.—See JURISDICTION, 46 *et seq.*

REVENUE.

I. JURISDICTION IN MATTERS OF. —See JURISDICTION, 8, 9. 30 *et seq.*

II. ARREARS OF. — See ACTION, 24. 59, 60. 93. 95, 96. 98. 103. 106. 109, 110. 116; ASSESSMENT, 60*a et seq.*; INTEREST, 17 *et seq.*

REVIEW OF JUDGMENT.—See PRACTICE, 332 *et seq.*

REVIVOR OF APPEAL.—See APPEAL, 55 *et seq.*

RIGHTS OF NEIGHBOURHOOD.--See PRACTICE, 78 *et seq.*; PRE-EMPTION, *passim.*

RIVER.

1. Alluvial lands which are gradually gained from the river belong, by way of accretion, to the lands of the adjoining proprietor. *Mt. Imam Bandi and another* v. *Hurgovind Ghose*. 30th June 1848. 4 Moore Ind. App. 403.

2. Lands having been submerged, by a change in the course of the river Ganges, after several years re-appeared. Upon a disputed question of right to such lands, by two adjoining proprietors, each claiming the lands to be part of his *Mauza*, the Sudder Dewanny Adawlut held the plaintiff's claim to be barred; first, by the Bengal rule of limitation, from lapse of time; and secondly, that the lands were alluvial, and attached to the *Mauza* of the defendant. Such decree, on appeal, was reversed by the Judicial Committee of the Privy Council; first, because the question of limitation, not having been put in issue by the pleadings, could not be allowed to operate on the case; and secondly, because the Court had mistaken the question in supposing it to be one of alluvion, the point at issue being one of boundary only, and that the plaintiff had made out his title to possession. *Ibid.*

ROBBERY.—See CRIMINAL LAW, 185.

SALE.

I. HINDU LAW, 1.
II. MUHAMMADAN LAW, 2.
III. IN THE SUPREME COURTS, 5.
IV. IN THE COURTS OF THE HONOURABLE COMPANY, 6.
  1. *Of lands*, 6.
    (*a*) *Generally*, 6.
    (*b*) *Validity of Sale*, 15.
    (*c*) *Rights and liability of Purchaser*, 31.
    (*d*) *Relinquishment of Purchase*, 48.
    (*e*) *Rights and liability of Vendor*, 51.
    (*f*) *Specification*, 54.

(g) *Notice and Proclamation*, 58.
(h) *Purchase money*, 62.
(i) *Bidding of Decree-holder*, 68.
(j) *Defaulter*, 70.
(k) *Reversal of Sale*, 72.
(l) *Postponement of Sale*, 93.
(m) *Objections*, 97.
(n) *Forms to be observed in*, 101.
2. *Sale of a Receipt*, 105.
3. *Sale of a Claim*, 106.
4. *Bill of Sale.*—See EVIDENCE, 21.
5. *Sale of a Decree.* — See PRACTICE, 326 *et seq.*
6. *Of Goods.*—See CONTRACT, *passim*; GAMING, 6 *et seq.*
7. *Contract of Sale.*—See CONTRACT, *passim.*
8. *Deed of Sale.*—See DEED, 8, 9. 16. 21.

I. HINDÚ LAW.

1. It is not a sufficient ground for holding a sale by a childless Hindú widow to be valid, that *one* of the heirs to the property affixed his name to the deed of sale. *Gopal Kishen Gooho and others* v. *Chundur Kishore Ghose and another.* 9th May 1850. S. D. A. Decis. Beng. 191.—Dick, Jackson, & Colvin.

II. MUHAMMADAN LAW.

2. A *bonâ fide* sale, in which the seller relinquishes all claim to the purchase-money, is valid. *Mt. Shookor-o-nissa* v. *Hoorun-o-nissa and another.* 8th March 1848. S. D. A. Decis. 141.—Barlow.

3. The want of possession in the person of the seller does not vitiate the sale of immoveable property. *Mt. Shurfun and another* v. *Sheikh Gholam Mohummud and others.* 13th May 1848. S. D. A. Decis. Beng. 448.—Tucker, Barlow, & Hawkins.

Sheikh Gholam Mohummud v. *Sheikh Ruhum Ali and another.* 13th May 1848. S. D. A. Decis. Beng. 450. — Tucker, Barlow, & Hawkins.

4. A vendor receiving part of the purchase-money, and promising to conclude the sale on payment of the remainder, is bound to complete the sale on tender of such balance. *Ameeroodeen* v. *Hajra Bibi.* 3d June 1848. S. D. A. Decis. Beng. 499.—Tucker, Barlow, & Hawkins.

III. IN THE SUPREME COURTS.

5. Where land subject to a trust or equitable claim is seized and sold in execution of a judgment against the legal owner and trustee, the purchaser, without notice, takes, subject to the equity. *Moolchund Baboo and another* v. *Driver and others.* 12th March 1846. Montriou, 159.

IV. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *Of Lands.*

(a) *Generally.*

6. The institution of a regular action by a claimant, after the summary rejection of his claim to property advertised for sale in execution of a decree, does not necessarily bar the immediate sale of the rights and interest of the judgment debtor. *Mufeezooddeen Choudrie, Petitioner.* 14th March 1842. *1 S. D. A. Sum. Cases, Pt. ii. 24.—Reid.

7. Construction No. 588, par. 4, which rules that a defendant may legally alienate his property prior to proclamation of attachment under Cl. 2. of Sec. 25. of Reg. II. of 1806, was held to be applicable only to *bonâ fide* sales.[1] *Bhoz Raj Thakor*

[1] A case of fictitious sale, prior to the issue of proclamation of attachment under Reg. II. of 1806, was reversed. See *Baboo Odyet Nurrain Sing* v. *Juggomohun Doss.*

v. *Futteh Chand Sahoo.* 18th Feb. 1845. 7 S. D. A. Rep. 191.—Rattray, Barlow, & Gordon.

8. Where it was admitted by both parties that an estate sold by the Collector was a heritable *Talook*, within a Government *Khás Mahâll;* it was held, that, under Sec. 2. of Act VIII. of 1835, the Collector was at liberty to sell the estate for arrears of rent, without obtaining a summary decree of the Sudder Dewanny Adawlut.[1] *Kalee Pershad and others* v. *Collector of Backergunge and others.* 17th Nov. 1845. S. D. A. Decis. Beng. 422.—Jackson.

9. Where an award of arbitration had declared the plaintiff's claim to render a sale absolute under Reg. XVII. of 1806 to be inadmissible; it was held, that he could not come into Court to claim possession on the plea that the sale had become absolute under that Regulation. *Kesree Singh and another* v. *Mihrban and another.* 18th Aug. 1846. 1 Decis. N. W. P. 110.—Thompson.

10. In a suit to stay a sale in execution of a decree; it was held, that a plea of illegal attachment ought to be inquired into and decided upon. *Munnoo Lall and another* v. *Mt. Bunno Begum.* 23d March 1847. 2 Decis. N. W. P. 69.—Tayler, Thompson, & Cartwright.

11. Property situated in a military cantonment cannot be transferred contrary to the rules in force within such cantonment. *Cohen, Petitioner.* 9th Aug. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 115.—Hawkins.

12. Counterclaims to proceeds of a sale held in execution of a decree, founded on the rights of the original decree-holder, cannot be decided summarily. *Ramchunder Fotedar and others, Petitioners.* 3d Feb. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 136.—Tucker, Barlow, & Hawkins.

12 *a.* A suit instituted by a claimant whose claims have been already thrown out on the summary side of the Court for the same real property, is no bar to the sale of the rights and interests of the defendant, in such property, in execution of the decree against him.[2] *Iswarchandra Paul Chaudhuri and others, Petitioners.* 20th Nov. 1848. 2 Sev. Cases, 431.—Hawkins.

13. Held, that a sale of land may, under some circumstances, be adjudged to be complete, and consequently to be such a transfer that a decree can be given to the purchaser for the land sold, although the deed of sale which evidences the conveyance may not have been delivered to the purchaser.[3] *Mt. Ummun Bee-*

8th Jan. 1844. 7 S. D. A. Rep. 147. The Sudder Dewanny Adawlut decreed the legality of a *bonâ fide* sale, prior to attachment of property under Reg. II. of 1806. See the same case; and *supra,* Tit. ATTACHMENT, Pl. 25. 27.

[1] The Sec. of the Act above cited includes within its provisions sales under Sec. 25. of Reg. VII. of 1799, which latter enactment distinctly points out, that when an estate is under *Khás* collection, on the part of Government, the Collector is authorised to proceed against dependent *Talookdárs,* and under-tenants of every denomination, who are in arrears, "without any previous application to the Dewannee Adawlut."

[2] See the case of *Hurrischunder Bonnerjea, Petitioner.* 1 S. D. A. Sum. Cases, Pt. ii. 6. And see *supra,* Pl. 6.

[3] In this case the Court observed—"The Court are of opinion that in these provinces the delivery of the deed which evidences the transfer cannot be peremptorily held to be a necessary condition to the perfectness of the conveyance. They believe that such a rule would be conformable with the English law, and also, that, if it were once established, the most beneficial consequences would be felt; but at the same time there are considerations which deter the Court from pronouncing, as law for the future, that every conveyance is *inchoate* and imperfect, until the deed which evidences the transaction has been delivered." The practice of the Courts appears to have been regulated by the provisions of the Muhammadan law, although the Courts are not required to attend to such law in cases of contract. Under that law the delivery of a deed is not necessary to the validity and perfectness of a sale of land; but nevertheless the Judge should form his opinion

bee v. *Moulvee Mohumed Oomer.* 9th July 1849. 4 Decis. N. W. P. 219.—Thompson, Begbie, & Lushington.

14. It is not necessary that an under-tenant, contesting an ejectment by a lessee, who has consented to a compromise by which the lessor (an auction purchaser), subsequently to granting the lease, relinquished the property leased, to the ex-proprietor, on the ground of the illegality of the sale, should sue in the first instance to *prove* the illegality of the sale. *Watson* v. *Sreemunt Lal Khan.* 2d July 1850. S. D. A. Decis. Beng. 327.—Barlow.

(*b*) *Validity of Sale.*

15. Plaintiffs objected to a sale made by the Collector on the ground that if he, the Collector, had made a set-off for money due to the plaintiffs for land taken in excess from their estate by the Revenue authorities as *Nú Ábád* land, or land not included in the Settlement, and also for money due to them as a refund for illegally resumed rent-free land, there would not have remained any balance against the estate. Held, that, according to Sec. 7. of Act XII. of 1841, such claim to compensation could not bar the sale. *Keylaschunder Kanoongo and another* v. *Collector of Chittagong.* 30th Aug. 1845. S. D. A. Decis. Beng. 281.—Gordon.

16. A sale was held to be vitiated in consequence of the sale proclamation having been drawn out contrary to the provisions of Cl. 2. of Sec. 3. of Reg. VII. of 1825. *Durbijei Singh and another* v. *Nadir Bibi.* 30th April 1846. S. D. A. Decis. Beng. 172.—Rattray, Tucker, & Barlow.

17. Of several sharers of an estate sold for arrears of revenue, one received his share of the surplus proceeds; two others moved the Commissioners of Revenue and the Civil Court to have their shares applied to the satisfaction of decrees against them; the shares of the rest were similarly applied after issue of notice to them, and no objection offered. Held, that, under Cl. 1. of Sec. 27. of Reg. XI. of 1822, the sale could not be contested by any of the sharers.[1] *Mt. Dya Maye Debbea and others* v. *Collector of Bhuloa and others.* 3d Aug. 1846. 7 S. D. A. Rep. 274.—Jackson.

17*a*. The receipt of any portion of the purchase-money, proceeds of an auction sale, by only one or two out of many sharers in the estate sold, does not operate as a bar to the institution of a suit for cancelling the sale by the other sharers who have not received any portion of the money, the property sold being held by them in commonalty.[2] *Hoonwunt Singh and another* v. *Wulleedad Khan and others.* 29th Dec. 1847. 2 Decis. N. W. P. 390.—Tayler, Cartwright, & Begbie.

18. In a suit to reverse a revenue sale, the claim of the plaintiff was

upon the merits of each case as he thinks just and equitable. This view of the practice is supported by the case of *Meerza Moohummud Ali* v. *Nuwab Soulut Jung.* 4 S. D. A. Rep. 168.

[1] The above decision was based upon the case of *Bustee Ram* v. *Collector of Sarun*, decided on the 1st March 1836; this latter case has not been reported, but it is to the effect, that, in a similar sale, some sharers having received their shares of the surplus proceeds, and the share of others having been paid away by order of Court in satisfaction of decrees, though contrary to their wishes, the latter cannot question the validity of the sale. But *quære*, as the case of *Bustee Ram* was decided by a single Judge, and has not been selected for publication, whether the Court would not, *quoad* that case, consider the right of parties, whose share of the surplus proceeds had been paid away by order of Court *contrary to their wishes*, to contest the sale, as still an open question. See *infra*, Pl. 19, and note.

[2] The proper course in such cases is for the Collector to await a joint application from the whole of the proprietors for the surplus proceeds of the sale, or, had they agreed amongst themselves as to the respective sums to which each were entitled, to have paid them in such proportions.

dismissed, he having allowed part of the proceeds to be applied to his benefit, without making any objection, after confirmation of the sale by the Revenue Board, although he had opposed such application beforehand.[1] *Doorgapurshad Mungraj* v. *Collector of Cuttack and others.* 8th Feb. 1848. 7 S. D. A. Rep. 436.—Jackson, Hawkins, & Currie.

19. Payment by the Civil Courts of the debts of a co-sharer out of the proceeds of a sale for arrears of revenue, was held not to bar a right of action for reversal of such sale by the plaintiff (co-sharer), who was not shewn to have acquiesced in any way, either expressly or tacitly, in such payment.[2] *Collector of Backergunge* v. *Indurmunee Chowdrain.* 9th March 1848. 7 S. D. A. Rep. 462.—Hawkins & Currie.

20. A sale of lands by one of two co-sharers, without written powers to sell given to him by his co-sharer, was upheld, on proof that the co-sharer was present at the transaction, and consented thereto. *Mt. Jye Kowur* v. *Mt. Lukhputtee Kowur.* 15th July 1847. S. D. A. Decis. Beng. 332.—Rattray, Barlow, & Jackson.

20 *a.* An *under tenure* in an estate under *Butwára*, being sold under Act XII. of 1841 for the realization of a fine imposed under Cl. 2. of Sec. 17. of Reg. XIX. of 1814, upon a party *not* a proprietor (for not delivering the accounts of his *Talook*), such sale is illegal. *Ruttun Munee Dassee and others* v. *Collector of Mymensingh and others.* 31st July 1847. S. D A. Decis. Beng. 381.—Tucker, Barlow, & Hawkins.

21. A deed of sale may be partly good and partly bad, according as circumstances may raise presumptions for or against the separate titles conveyed by it. *Bishen Soonduree Dibbea and another* v. *Aga Mohummud Kamel.* 31st July 1847. S. D. A. Decis. Beng. 377.—Tucker, Barlow, & Hawkins.

22. Where property within the Civil jurisdiction of one district, but within the Revenue jurisdiction of another, had been sold in execution a decree by the Collector of the former district; it was held, that such sale was opposed to Cl. 3. of Sec. 4. of Reg. VII. of 1825. *Mosahibooddeen* v. *Ranee Kishen Munee and others.* 29th Jan. 1848. 7 S. D. A. Rep. 426.—Tucker, Barlow, & Hawkins.

23. A sale of lands by two brothers, (Hindús) was upheld, although one of them was a minor at the time, because the purchaser had been in occupancy for eighteen years. *Muhubut Khan* v. *Poorbanund Mehtee and another.* 25th March 1848. S. D. A. Decis. Beng. 226.—Tucker, Barlow, & Hawkins.

24. A deed of sale of real property, for a specified consideration, although with the avowed object of enabling the seller to prosecute a claim at law, was held, under the circumstances, not to be invalidated by the vendor not being in possession. *Mt. Shurfun and another* v. *Sheikh Gholam Mohummud and others.* 13th May 1848. 7 S. D. A. Rep. 495.—Tucker, Barlow, & Hawkins.

25. *A* was appointed to the office of Salt *Dároghah* by the Salt Agent at Chittagong, and executed an engagement, pledging certain property specified at the foot of it, and adding

[1] In this case the plaintiff did not appeal nor file his suit until upwards of six years after the sale. Such negligence was considered by the Court to imply a consent on his part to the application of the money to his benefit.

[2] It will be observed, that, in the case of *Mt. Dya Maye Debbea and others* v. *Collector of Bhuloah and others,* (*supra,* Pl. 17.) the parties suing for reversal of the sale were shewn to have given an express or implied consent to the appropriation of the sale proceeds, and consequently their claim was barred. The case of *Bustee Ram* v. *Collector of Sarun,* quoted in the note, (*supra,* p. 359, note 1.) was not decisive, and the present case may be considered as settling the point mentioned in the conclusion of such note. And see *infra,* Pl. 64.

that neither himself nor his heirs would alienate by gift, sale, or otherwise, any of his property, real or personal, being in his own name or in the names of others, till his accounts should be settled. Shortly after this, *A* sold part of his property to *B*. Held, that this act of *A* was an undue alienation of the property which he had already pledged to Government; and that, as he had voluntarily relinquished his power of alienation, the sale was invalid, and the property sold to *B* was liable to sale in execution of a decree passed in favour of the Salt Agent. *The Salt Agent of Chittagong* v. *Ramjeewun Dutt.* 15th July 1848. S. D. A. Decis. Beng. 682.—Tucker, Barlow, & Hawkins.

26. *A*, a *Zamíndár,* having sued for the rent of a *Talook* under Reg. VII. of 1799, obtained a decree from the Collector, and the whole *Talook* was sold at auction. *B* sued for reversal of the sale, and for one-third of the *Talook,* which she claimed by right of inheritance, her name not having been inserted in the Collector's decree, and she not being a party to the suit in which that decree was passed. Her right of inheritance was admitted; but it appearing that, in a former suit for rent, *A* had made *B* a party, and the Collector had struck out her name for want of proof that she was in possession; moreover that the estate was held jointly by all the sharers, and was managed by the male sharers, and was liable in its entirety for the rent; it was held, that the omission of *B*'s name in the summary suit was not sufficient to vitiate the sale. *Anund Mye* v. *Ramdoorga.* 19th Jan. 1848. S. D. A. Decis. Beng. 24.—Jackson, Hawkins, & Currie.

26*a*. A second sale of property which has been already sold in execution of a previous decree of Court, and publicly purchased by the decree-holder at the highest bidding, cannot be upheld. *Babu Kunhiya Singh and another, Petitioner.* 26th Feb. 1849. 2 Sev. Cases, 457.—Jackson.

27. The consideration for a deed of sale was alleged to have been the relinquishment of certain sums of money due by the vendor, on account of certain decrees and bonds; but as the particulars thereof were not set forth in the contract, it was held to be imperfect. *Shambuttee Koonwurree* v. *Choonee Singh.* 23d May 1849. S. D. A. Decis. Beng. 168.—Dick, Barlow, & Colvin.

28. A revenue sale cannot be contested, unless an appeal against the sale has been made to the Commissioner, and the contraventions of the law specifically urged in such appeal. *French and others* v. *Kazee Suffur Ali and others.* 5th July 1849. S. D. A. Decis. Beng. 274.—Dick, Barlow, & Colvin.

29. The mere circumstance of a vendor being in jail when he sold an estate in part satisfaction of a debt, is quite insufficient to invalidate such sale. *Garstin* v. *Obhoye Churn Mookerjee.* 16th July 1849. S. D. A. Decis. Beng. 289.—Barlow, Colvin, & Dunbar.

30. It is not sufficient to invalidate a sale, that the vendor was allowed to recall, before the Master of the Supreme Court, his acknowledgment of a debt, in partial satisfaction of which the sale was made. *Ibid.*

30*a*. The essential requisites to the validity of a sale in execution of decrees of Civil Courts under Reg. VII. of 1825, and Act IV. of 1846, are the simultaneous or consecutive issue of distinct preliminary processes of attachment on the spot, notification, and proclamation of sale. *Brijlal Upadhya, Petitioner.* 1st Aug. 1850. 3 Sevestre, 1.—Dick, Colvin, & Barlow.

(*c*) *Rights and liability of purchaser.*

31. A plaintiff, though not actually the purchaser of an estate at a revenue sale, but who had bought the estate from his agent, who bid

for and purchased it in his own name, was held to have acquired the rights of that purchaser, and to be vested with those rights. *Kishenmunee Debbea and another* v. *Baboo Doarkanath Thakoor.* 3d Nov. 1845. S. D. A. Decis. Beng. 316.—Jackson.

32. A purchaser of a *Mukarrarí* tenure is not responsible for *Kists* antecedent to his purchase; and if, after obtaining possession, he should collect rents due to the former *Mukarrarídárs*, it is a question to be decided on suit by the said former *Mukarrarídárs* against the purchaser, and not on the suit of the *Zamíndár* for his rent. *Maharajah Mahtab Chunder Behadoor* v. *Pearee Mohun Roy.* 27th Dec. 1845. S. D. A. Decis. Beng. 486. —Tucker, Reid, & Barlow.

33. A purchaser of land is not debarred from claiming possession of such land because the late proprietor, the vendor, did not urge his claim or make any objections at the time of the Settlement, when the Collector made engagements with other parties. *Rayson* v. *Bamun Doss Mokerjee and others.* 12th Dec. 1846. S. D. A. Decis. Beng. 419. —Reid.

34. Purchasers at a sale under a decree of Court were held liable for advances made on account of a lease voided on their purchase. *Pearee Lall* v. *Saliq Ram Singh and others.* 1st June 1847. S. D. A. Decis. Beng. 189.—Rattray.

35. A balance of revenue due from an integral estate sold in execution of a decree must be deducted from the purchase-money, and should such deduction be neglected, it cannot be demanded from the auction purchaser.[1] *Commissioner of Agra* v. *Bell.* 1st June 1847. 2 Decis. N. W. P. 149. —Tayler, Begbie, & Lushington.

36. An estate having been sold at an auction sale in satisfaction of a decree, and afterwards again sold by the auction purchaser to a third party; it was held, that such third party was not personally answerable for a debt due on a bond executed by the original proprietor, and in which he had pledged the estate in satisfaction of the debt; the obligee's claim being on the estate, and not the party in possession. *Ahmud Hoossein Khan and others* v. *Bukhtawur Lall.* 9th June 1847. 2 Decis. N. W. P. 171. —Tayler, Begbie, & Lushington.

37. The mere fact of a Sheriff's sale having taken place, confers no right to the property, if, at the time of the sale, the interests of the party, whose property has been sold, had ceased prior to the sale, or the property had in any way been pledged or transferred to a third party. *Bhujjun Lall and another* v. *Maxwell.* 29th Dec. 1847. 2 Decis. N. W. P. 387.— Tayler, Cartwright, & Begbie.

38. Two purchasers of an indigo factory were held to be liable for a debt contracted, for the benefit of the factory, by one of them, whilst he was a manager for the former proprietor. *Syud Mohummud Bakur* v. *Blanchard and others.* 11th March 1848. S. D. A. Decis. Beng. 186.—Tucker, Barlow, & Hawkins.

39. A purchaser occupies the place of the party whose rights he purchased, and may appeal from any decision adverse to such party. *Mo-*

[1] This decision was founded on paragraph 143 of the Circular of the Sudder Board of Revenue No. 2. The Court remarked, that they considered the declarations of the Sudder Board of Revenue, published with the sanction of Government, and promulgated through the Civil Courts, to amount to a pledge on the part of the Government, as completely as if they had made themselves parties to a contract. They further observed, that—"it has been the *practice* of the Revenue authorities, ever since the establishment of the Civil Courts in these provinces, to deduct Government balances from the purchase money whenever entire *Mehals* are sold. The practice of forty years has almost the force of law, and the Court are of opinion that any party suffering from the neglectful non-observance of a practice, thus sanctioned by time, and inculcated by precept, has a legal claim to redress."

hun Lall Thakur and others v. *Bibi Bhobun and others.* 22d March 1848. S. D. A. Decis. Beng. 215. —Hawkins. *Dubus* v. *Pursunnath Raee and others.* 6th April 1848. S. D. A. Decis. Beng. 293.—Tucker & Hawkins.

40. A private purchaser of an estate sold at a public auction sale may sue the original proprietors for possession. *Dewan Bibi* v. *Shumshere Ali and others.* 22d April 1848. S. D. A. Decis. Beng. 355. —Tucker, Barlow, & Hawkins.

40 *a.* The purchasers of a *Talookdárí* right, at sale under Act VIII. of 1835, in satisfaction of a summary decree for rent, cannot assume to themselves the power of ousting an under-tenant without application to the proper authority. *Gour Soondur Chatterjee and another* v. *Bishennath Shah.* 30th March 1848. S. D. A. Decis. Beng. 268.—Barlow.

41. The purchaser of the rights of an *Ousut Talookdár* has not the same privilege as an auction purchaser at a public sale for balance of revenue, and cannot oust the *Ním Ousut Talookdárs.* *Mt. Neelmunnee Dibia* v. *Kishun Kishwur Neogee and another.* 14th Feb. 1849. S. D. A. Decis. Beng. 31.—Dick, Barlow, & Jackson.

42. A purchaser at an auction sale of an estate which had been mortgaged previous to the sale, cannot be made personally responsible for the amount of the debt. *Ahmud Hoossein Khan and others* v. *Bukhtawur Lall.* 9th June 1847. 2 Decis. N. W. P. 171.—Tayler, Begbie, & Lushington. *Mewaram* v. *Allah Buksh Khan.* 27th March 1849. 4 Decis. N. W. P. 68.—Tayler, Thompson, & Cartwright.

43. A party purchasing the rights and interests of another in an estate cannot question a previous mortgage by the former owner. *Dataram Singh and another* v. *Odit Singh.* 9th Aug. 1849. S. D. A. Decis. Beng. 341. — Dick, Barlow, & Colvin.

44. *A* was the auction purchaser of the rights and interests of *B* and *C* in a certain *Mauza* sold in satisfaction of a decree. *D*, the uncle of *B* and *C*, died *before the sale*, childless, and leaving *B* and *C* his heirs. Held, that the rights and interests of *D* were sold at the auction sale, though not under that name, as they had merged into the shares of those whose rights and interests were sold, and that *A* was entitled to *D*'s share in the *Mauza*, unless such share were proved to have been transferred to a third party by *D* during his lifetime. *Oodeh Singh* v. *Mt. Hur Koonwur.* 14th July 1849. 4 Decis. N. W. P. 231. —Lushington.

45. The Government have the power of transferring their rights as auction purchasers with reservations. *Bhyro Indernurain Raee* v. *Mudungopal Bhadooree and others.* 15th March 1849. S. D. A. Decis. Beng. 73.—Dick, Barlow, & Colvin. *Bhyrub Inder Nurain Raee* v. *Roopchundur Shah and others.* 31st Dec. 1849. S. D. A. Decis. Beng. 488. —Barlow, Colvin, & Jackson.

45 *a.* The failure of an auction purchaser of property, sold in execution of a decree, to make good the amount of the purchase-money, does not exonerate the original debtor from the amount decreed against him, and render the auction purchaser liable to the decree-holder. *Mt. Masoo, Petitioner.* 24th April 1850. 2 Sev. Cases, 543.—Dunbar.

46. A mortgagor obtained a decree for redemption of the mortgage, and for the excess receipts over and above the legal interest, and in the following year sold the redeemed property to the plaintiff, but tried afterwards to evade the contract; upon this the plaintiff brought an action for the establishment of the deed of sale, and was successful in all the Courts. Meanwhile, the original suit for redemption had been carried on in appeal by the mortgagee, when the mortgagor appeared and acknow-

ledged a balance in favour of the mortgagee, who withdrew his appeal, and the case was struck off. In consequence of this collusion between the parties, the plaintiff had been unable to obtain possession, and brought his action against the mortgagor and the guardian of the son of the mortgagee for possession and *Wásilát*. Held, that the plaintiff's deed of sale, and the redemption of the mortgage, having been judicially established, could not be called in question; and the mortgagor having already parted with his interests in the property to the plaintiff *before* his appearance in appeal and his acknowledgment in favour of the mortgagee, such acknowledgment was void, and the plaintiff, as his representative, was entitled to possession. A decree was accordingly given in his favour. *Lall Pookh Pal Singh* v. *Madaree Lall.* 22d June 1850. 5 Decis. N. W. P. 126.—Brown.

47. No title can be derived from a sale in execution of a decree, beyond that possessed by the party against whom the decree was expressly passed. *Tara Chand Bukshee* v. *Kumla Kaunt Mujmoadar and others.* 21st Feb. 1850. S. D. A. Decis. Beng. 26.—Dick, Barlow, & Colvin.

(*d*) *Relinquishment of Purchase.*

48. Where a public purchaser at a sale for arrears of revenue relinquished the estate to the former proprietors, on the ground of an admitted illegality in the sale; it was held, that the former proprietors were not entitled to exercise the privileges of an auction purchaser. *Sreemunt Lal Khan* v. *Watson.* 13th July 1848. 7 S. D. A. Rep. 516.—Tucker, Barlow, & Hawkins.

49. Prior to the relinquishment of an estate by an auction purchaser on the ground of the illegality of the sale, and by adjustment between the parties, the auction purchaser gave a lease to a third party, who, however, acquiesced in the subsequent act of relinquishment, in consideration of receiving a new lease from the old proprietor. Held, that such acquiescence involved an admission of the illegality of the sale, and that, therefore, such third party retained no right of setting aside under-tenures situated within the property leased to him by the old proprietor, which right he might have exercised, until the sale had been declared illegal by a decree of Court, had he declined to assent to the compromise, and remained only as lessee of the auction purchaser. *Watson* v. *Sreemunt Lall Khan.* 2d July 1850. S. D. A. Decis. Beng. 327.—Barlow.

50. An auction purchaser, on the express ground of the illegality of the sale, relinquished the estate to the ex-proprietor. Held, that such purchaser had relinquished his *entire rights as auction purchaser*, and consequently his rights and privileges as such. *Ibid.*

(*e*) *Rights and liability of Vendor.*

51. Where parties were, in a Settlement proceeding, recognised as the *Zamíndárs* of the estate, and engagements taken from them accordingly, and, four months afterwards, they sold the estate to another party; it was held, that the mere fact of the Settlement not having been confirmed by Government at the time of the sale was no bar to the vendors selling whatever rights they possessed in the property, just as they then stood. *Bawur and others* v. *Sheo Deen.* 9th July 1846. 1 Decis. N. W. P. 76.—Cartwright.

52. By the provisions of Cl. 7. of Sec. 3. of Reg. VII. of 1825, a decree-holder bringing property to sale in execution of his decree, is not answerable for the purchase-money to the auction purchaser (unless fraud be proved on his part), should the title turn out to be bad, or the property

not worth what the purchaser had imagined. *Ramsuhay* v. *Mahomud Omur and others.* 26th Jan. 1847. 2 Decis. N. W. P. 16.—Tayler, Thompson, & Cartwright.

53. *A* deposited money in Court in advance of the purchase-money of certain lands on account of himself and the other purchasers, to be paid to two persons, *B* and *C*. Upon this deposit the purchasers obtained possession. Notice was issued to *B* and *C* to appear and receive the money deposited. *B* appeared, and proved his right to one-half of the deposit, and it was paid to him. *C* did not appear, but a third person, *D*, came forward, and declared that he was a sharer in *C*'s moiety to the extent of two-thirds. On the word of *A*, *D*'s statement was admitted, and two-thirds of the remaining moiety were paid to him. Another portion was afterwards paid to *E*, also on the word of *A*, that he, *E*, was a partner of *C*. Afterwards the sale was cancelled, and *A*'s widow, *F*, and the other purchasers, sued to recover the portion of the amount deposited, paid to *B*, *D*, and *E*. Eventually an amicable arrangement took place between the parties: the mesne profits derived from the land during the period of the purchasers' possession were paid to the vendors, whose acknowledgment in full of all demands was obtained, and the portion of the deposit paid to *B* was credited to the purchasers. By this arrangement every thing was settled except the repayment of the money taken by *D* and *E*, for which, with interest, *F* and the other purchasers sued the vendors. What was intended for *C* had not been taken by him, and was received back by *F* and the other purchasers. *D* and *E* denied having had any connexion with the matter at issue. The claim of *F* and the other purchasers was decreed against the vendors with interest and costs. *Mt. Mina Kowur and another* v. *Nund Kishoor Singh and others.* 10th May 1847. S. D. A. Decis. Beng. 137.—Rattray, Dick, & Jackson.

(*f*) *Specification.*

54. Where a sale was made under Cl. 3. of Sec. 4. of Reg. VII. of 1825, in execution of a decree of Court, and the Collector took upon himself to sell *all* the rights of the proprietor, when he was directed to sell *a specific portion*, and thus, unwittingly, sold many times more than the portion specified; it was held, that the sale was unquestionably illegal. *Abdool Hufeez* v. *The Collector of Mymensing and others.* 20th Aug. 1845. S. D. A. Decis. Beng. 275.—Dick.

55. A discrepancy between the number of a lot put up for sale, as registered in the Collector's Office, and as entered in the proclamation, is not a sufficient irregularity to vitiate the sale of such lot. *Ram Nath Ghose* v. *Nityanund Dutt and another.* 28th Nov. 1846. S. D. A. Decis. Beng. 399.—Tucker, Reid, & Dick.

56. At a sale of lands in execution of a decree, a lot was put up and sold under an erroneous designation; but as the entire estate, of which the lot sold, as wrongly designated, was a moiety, was really liable for the decree, the misdescription was not allowed to prejudice the rights acquired by the auction-purchaser. *Kunhya Lal and others* v. *Achumbhit Lal and another.* 12th Aug. 1847. S. D. A. Decis. Beng. 432.—Rattray, Barlow, & Jackson.

57. Where, in an advertisement of sale under execution of a decree, a limited share only is specified as to be sold, no title can be conferred by the actual sale, (though that may be of rights and interests generally), in excess of the share specified in the advertisement. *Bhowanee Pershad and others* v. *Anunt Lall.* 4th April 1850. S. D. A. Decis. Beng. 97.—Dick, Barlow, & Colvin.

(*g*) *Notice and Proclamation.*

58. When an estate is situated within two or more *Thanahs*, it is not necessary to publish the notice of its sale in all: under Sec. 5. of Reg. VII. of 1830, it is sufficient to publish it in any one of them. *Ram Nath Ghose* v. *Nityanund Dutt and another.* 28th Nov. 1846. S. D. A. Decis. Beng. 399.—Tucker, Reid, & Dick.

59. In a sale in execution of a summary decree prior to the passing of Act VIII. of 1835, the notice must issue from the Judge's Court, and the sale take place there also; and the Collector could not, previous to that Act, sell landed property in execution of his own summary award. *Rajah Suttochurn Ghosal* v. *Hurmohun Biswas and another.* 1st March 1848. S. D. A. Decis. Beng. 129.—Jackson. *Rajah Sutchurn Ghosaul* v. *Gourkishore Biswas.* 29th July 1848. S. D. A. Decis. Beng. 726.—Tucker, Barlow, & Hawkins.

59 *a*. Claims to property sold in execution of a decree, if not preferred before the sale within thirty days of the proclamation, cannot be entertained summarily after the sale, merely because preferred within one month thenceforward. *Mooteelal, Petitioner.* 12th June 1848. 2 Sev. Cases, 393.—Hawkins.

60. A sale in execution of a decree of Court having been held, and the notice of sale not having been issued for thirty days, as required by Reg. VII. of 1825, was declared invalid. *Juseem-o-zuman Chowdhree* v. *Gournath Shah and another.* 26th July 1848. S. D. A. Decis. Beng. 721.—Dick, Jackson, & Hawkins.

60*a*. The thirty days allowed by Cl. 2. of Sec. 3. of Reg. VII. of 1825 after proclamation, must be reckoned from the date of publishing such proclamation in the *Mofussil*, and not from the date of ordering the proclamation. *Mt. Shureef-oon-Nissa and others, Petitioners.* 17th May 1849. 2 Sev. Cases, 569 note.—Jackson. *Sayyud Jafur Ally, Petitioner.* 20th March 1850. 2 Sev. Cases, 567.—Rattray, Tucker, & Barlow.

61. A party is not entitled to question a sale on the ground of a cautionary notice against a sale of the property having been issued by a creditor who takes no part in the suit with the party objecting. *Muha Rajah Het Nurain Singh* v. *Lala Khurugjeet Singh.* 16th Aug. 1849. S. D. A. Decis. Beng. 352.—Dick, Barlow, & Colvin.

(*h*) *Purchase-money.*

62. The purchasers of an estate, sold for arrears of revenue, having relinquished it on the reversal of the sale by a decree of the Zillah Court, the Collector alone appealed. Held, that the Collector was not justified in deducting from the amount of the purchase-money the sum due on account of revenue for the period intervening between the date of the relinquishment of the estate by the purchasers and that of dismissal of his appeal against the reversal of the sale. *Collector of Dacca* v. *Lamb and others.* 9th March 1848. 7 S. D. A. Rep. 446.—Jackson, Hawkins, & Currie.

63. No portion of the purchase-money of an estate, held conjointly, can be legally paid to, or on behalf of, any one, or number, of the shareholders, except on the receipt, or with the consent, of the whole. *Shureeutoola Chowdhree and others* v. *Deputy-Collector of Pubna and others.* 23d March 1848. S. D. A. Decis. Beng. 220.—Dick.

64. The receipt of a portion of the purchase-money by one shareholder is no bar to the action of another shareholder, not taking his share of such purchase-money, to contest a sale for arrears of revenue.[1] *Ibid.*

65. The deposit which is forfeited under Sec. 5. of Act IV. of 1846, on neglect to pay the purchase-money

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[1] See *supra*, Pl. 17 *et seq.*

decree, is not divisible amongst all who hold decrees against the judgment debtor, but is to be applied in liquidation of the particular claim, for the satisfaction of which the sale has been advertised. *Fletcher & Co., Petitioners.* 1st Aug. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 144.—Tucker, Barlow, & Hawkins.

65*a*. The purchase-money of a cancelled sale of property, still in deposit in Court, pending the institution of a regular suit to try the validity of the sale, may be invested in Company's paper, on the special application of the auction purchaser, and so retained in deposit till the decision of the case. *Lamb, Petitioner.* 21st Sept. 1848. 2 Sev. Cases, 415.—Hawkins.

66. When a sale in execution of a decree is set aside, it is imperative upon the Court to give directions whether or no the purchaser is to be reimbursed under Reg. VII. of 1825. *Shibsoondree Dassee* v. *Pudmolochun Surma and others.* 21st June 1849. S. D. A. Decis. Beng. 243. —Jackson.

67. Although the non-payment of a portion of the purchase-money has sometimes been held to be a ground for considering a sale incomplete, such non-payment does not necessarily make it so. *Gowal Dass* v. *Soorjapershad.* 23d Sept. 1850. 5 Decis. N. W. P. 364. Begbie, Lushington, & Deane.

(*i*) *Bidding of Decree-holders.*

68. The offer of a decree-holder to take property, sold in the execution of his decree, for more money than was paid by the purchaser at such sale, was rejected by the Sudder Dewanny Adawlut, the sale being unexceptionable. *Waheed-oon-Nissa, Petitioner.* 10th Dec. 1838. 1 S. D. A. Sum. Cases, Pt. i. 16.—Reid.

69. The orders of a Zillah Judge, who refused to admit, without deposit, the bid of a decree-holder for of property sold in execution of a property under sale in execution of his own decree, were reversed by the Sudder Dewanny Adawlut. *Tahir Mahommed, Petitioner.* 6th March 1839. 1 S. D. A. Sum. Cases, Pt. i. 18.—Rattray & Reid.

(*j*) *Defaulter.*

70. The appellant claimed to share in an estate sold for Government arrears, and purchased at the auction sale by the respondent. After the sale, the respondent received from appellant, who was one of the sharers in the estate, a portion of the earnest-money to be paid into the Collectorate, and wrote him a deed to let him have a certain share on receiving the balance of the price of his said share: on this deed the appellant's claim was founded. It was admitted by the appellant, and stated in the deed, that the parties had come to an understanding before the sale, that respondent was to purchase, and appellant to share, to the extent claimed by him. Held, that the fact of the appellant being one of the defaulters prohibited him, by law, from purchasing; therefore the transaction was an infraction of the law by evasion, and any claim originating in it untenable in Court. *Rahda Purshad Rae* v. *Gouree Purshad Rae.* 17th March 1846. S. D. A. Decis. Beng. 104.—Dick.

71. The existence of a deposit belonging to a defaulter cannot be held to vitiate a sale for arrears of revenue, unless it be proved that the defaulter did, prior to the sale, petition the Collector to devote it to the liquidation of the arrear due by the defaulter. *Ram Nath Ghose* v. *Nityanund Dutt and another.* 28th Nov. 1846. S. D. A. Decis. Beng. 399.—Tucker, Reid, & Dick.

(*k*) *Reversal of Sale.*

72. The provisions of Sec. 24. of Reg. XI. of 1822 clearly point out

that the orders of the Board of Revenue for annulling a sale, under the circumstances therein indicated, on whatever ground, are final. *Janokeenath Chowdree* v. *Collector of Moorshedabad.* 10th July 1845. S. D. A. Decis. Beng. 227.—Barlow.

73. An auction sale of a *Patní* tenure for arrears of rent was set aside as illegal, it being proved, that the arrears had accrued during the *Zamíndár's* management under his attachment of tenure. *Syud Keramut Ali Mootuwulee* v. *Sreemuttee Dassea and others.* 28th Aug. 1847. S. D. A. Decis. Beng. 480. —Dick.

74. A purchaser at a *Patní* sale being a Collector's officer is no ground for reversing the sale; though the thing purchased would be liable to confiscation, if Reg. XI. of 1822 applied, which it does not. *Sham Chund Bose* v. *Dyal Chund Bose.* 12th Nov. 1845. S. D. A. Decis. Beng. 412.—Reid, Dick, & Jackson.

75. In a claim for the reversal of a *Patní* sale, the minority of the plaintiff at the time the balance accrued was held to be no ground for reversing the sale. The rent must be paid or the estate sold. *Ibid.*

76. By Sec. 14. of Reg. VIII. of 1819, no sale under Reg. VIII. of 1819 can be reversed unless the *Zamíndár*, at whose instance the sale took place, is made one of the defendants. *Sham Chund Bose and another* v. *Dyal Chund Bose and others.* 12th Nov. 1845. S. D. A. Decis. Beng. 412.—Reid & Jackson. (Dick dissent.)[1]

77. In a suit to cancel a bill of sale, half the purchase-money due on the bill of sale only having been paid, the bill of sale was deposited with one of the purchasers, with the understanding of all concerned that it was not to be given up to the other purchasers till the balance should be forthcoming. No portion of the balance was paid, but the bill of sale was given up contrary to the agreement. Held, that the bill of sale, having been palpably infringed and violated, should be cancelled and of no effect. *Dhoul Pandee* v. *Lotun Raee and others.* 23d April 1846. S. D. A. Decis. Beng. 167.—Rattray, Tucker, & Barlow.

78. The purchaser at a sale, in satisfaction of a decree of Court, of a party's *rights and interests*, is entitled to have the sale annulled, and recover the sale proceeds, on the non-existence of any *rights and interests* being established. *Achee Lal and another* v. *Bibi Basreh and others.* 8th June 1846. 7 S. D. A. Rep. 262.—Rattray, Tucker, & Barlow.

79. Held, that the private purchase of property, after its advertisement for sale in satisfaction of a decree, but without issue of proclamation of attachment, under Reg. II. of 1806, cannot be summarily set aside.[2] *Mehr Chunder Misr, Petitioner.* 3d Sept. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 84.—Tucker, Reid, & Barlow.

80. In a suit for the reversal of a sale for revenue arrears, a plea, that such sale was invalid, as having been held in the *Muharram*, was held to be inadmissible, because it was not urged in petition to the Commissioner. *Baboo Jorawun Singh and others* v. *Imrut Lal and another.* 18th Jan. 1847. S. D. A. Decis. Beng. 15.—Rattray, Dick, & Jackson.

81. In a claim to a portion of property sold in execution of a decree, it is not necessary for the claimant to sue for a reversal of the

[1] Cl. 1. of Sec. 14. of Reg. VIII. of 1819 declares, "It shall be competent to any party desirous of contesting the right of the *Zamíndár* to make the sales," &c. "to sue the *Zamíndár* for the reversal of the same." Mr. Dick observed in the present case—"This is not a suit contesting the right of the *Zamíndár* to make the sale; but the right of the purchaser, a defaulter, to make the purchase; and I think it would be hard to drag in the *Zamíndár* in every such case, in which there is no cause of complaint against him."

[2] And see *supra*, Pl. 7, and note.

sale. *Gowreechurn Ghose and others* v. *Anundchunder Ghose and others.* 28th Jan. 1847. S. D. A. Decis. Beng. 28.—Tucker.

82. In a suit to reverse a sale in execution of a decree, it is not necessary to bring a distinct suit to reverse a previous summary order rejecting a claim to the property sold. *Mahomed Ekbal Ali Khan* v. *Government and others.* 17th Feb. 1847. S. D. A. Decis. Beng. 56. —Tucker.

83. A regular suit to reverse a sale in execution of a decree should not be decided on the evidence adduced in the summary investigation previous to the sale. *Damoo Mytee* v. *Durpnarain Pal and others.* 20th Feb. 1847. S. D. A. Decis. Beng. 58.—Tucker.

84. An order to stay the sale of property, about to be sold by the Collector in execution of a decree, was transmitted by the Civil Court, but not received by the Collector prior to the sale. Held, that the sale could not be set aside. *Shumbhoonath Roy, Petitioner.* 17th March 1847. 1 S. D. A. Sum. Cases, Pt. ii. 94.—Tucker. *Bootaee Singh* v. *Bhugwan Dutt.* 11th July 1849. S. D. A. Decis. Beng. 283.—Dick, Barlow, & Colvin.

85. A petition for the reversal of a sale, sent by *Dawk*, was held not to have been preferred in the manner intended by Sec. 18. of Act XII. of 1841. *Rajah Shah Ukbur Hosein* v. *Collector of Zillah Cuttack and another.* 20th July 1847. S. D. A. Decis. Beng. 348.—Jackson.

86. Where, in a sale for arrears of revenue, the estate was sold for a balance not due,—that is, the balance was stated at a sum larger than the real balance,—and the proprietor's agents were prepared before, and at the time of sale, to pay the balance really due, and had actually tendered that balance, but such tender had been refused; it was held, that such sale was made in contravention of Cl. 4. of Sec. 5. of Reg. XI. of 1822, and the sale was accordingly cancelled. *Collector of Backergunge* v. *Indurmunee Chowdrain.* 9th March 1848. 7 S. D. A. Rep. 462.—Hawkins & Currie.[1]

87. Under the general powers vested in a Collector by Sec. 22. of Reg. IX. of 1833, it is competent to him to reverse a sale of a *Patní* tenure by a Deputy Collector under Reg. VIII. of 1819. *Kameekunt Chattoorjea, Petitioner.* 25th March 1848. 1 S. D. A. Sum. Cases, Pt. ii. 137.—Tucker, Barlow, & Hawkins.

88. Held, that the plea or pleas urged in the Civil Court for the annulment of a sale for arrears of revenue made under Reg. XI. of 1822, shall be the same as those which have been previously urged in the petition to the controlling Revenue authority,[2] "unless the failure to do so" (viz. to urge the plea to the Revenue authority) "shall be satisfactorily accounted for."[3] *Iradut Jehan* v. *Amanut Ali and others.* 22d May 1848. 3 Decis. N. W. P. 165.—Thompson and Cartwright.

89. In a sale held in execution of a decree of Court, objections, not urged summarily to the Court which ordered the sale, may be heard in a regular suit for the reversal of such sale. *Juseem-o-Zuman Chowdhree*

1 Mr. Jackson was also present, but he upheld the sale, considering that the defaulter had not tendered the money unconditionally, and that the absolute refusal of the Collector had not been proved. He also observed, that on the occasion of a dispute as to the amount of balance, the defaulter should, if he wish to stay the sale, deposit the full amount of the Collector's demand, under protest, as directed in Sec. 10. of Reg. XI. of 1822; "still," he added, "if the lesser sum, which was actually due, had been paid, or even offered unconditionally, the sale must have been set aside by a Court of Justice."

2 The authority in the permanently assessed districts is the Commissioner under Reg. VII. of 1830.

3 Reg. XI. 1822, s. 25.

v. *Gournath Shah and another.* 26th July 1848. S. D. A. Decis. Beng. 721. — Dick, Jackson, & Hawkins.

90. A contract of sale is liable to be set aside on a plea that the vendor was a lunatic at the time of sale, though not declared to be such under the general Regulations, if the plaintiff can shew that he has a vested interest in the estate sold, and can adduce good and sufficient proof that his interest is prejudiced by the sale, and that the party executing it was at the time of unsound mind. *Mohinder Oopaddhea and others* v. *Rughoobur Raee and others.* 18th July 1849. S. D. A. Decis. Beng. 293.—Jackson.

91. The Court cancelled a sale of property in execution of a decree, because it had been made on a Friday, contrary to par. 5. of the Circular Order No. 135, dated the 17th July 1846, which prescribes the first *Monday* only in every English month to be the day fixed for sales to take place. *Tarachand Deb Sirkar, Petitioner.* 22d April 1850. 3 Sev. Cases, 63.—Jackson.

91 *a.* A claim to property advertised for sale being rejected as fraudulent, cannot be admitted, *after* the sale, to cancel it by a summary suit. The claimant must have recourse to a regular suit after the sale, in conformity with Cl. 6. of Sec. 3. of Reg. VII. of 1825. *Kalinath Chutturjee, Petitioner.* 23d Nov. 1850. 3 Sev. Cases, 33.—Dunbar.

92. A Commissioner of Revenue is fully empowered, by Sec. 18. of Act XII. of 1841, to annul any sale for arrears of revenue which shall *appear to him* to have been held contrary to the provisions of that Act; and the Civil Courts have no jurisdiction to inquire into the soundness of his opinion upon that point. *Buldeo Shaha* v. *Collector of Moorshedabad and others.* 31st Dec. 1850. S. D. A. Decis. Beng. 614. —Dick, Barlow, & Colvin.

(*l*) *Postponement of Sale.*

93. Under Sec. 11. of Act I. of 1845, a Collector may *exempt* an estate advertised for sale from such sale, or the sale may be daily adjourned under Sec. 13.; but he has no authority to postpone it for an indefinite period. *Hoonwunt Singh and another* v. *Wulleedad Khan and others.* 29th Dec. 1847. 2 Decis. N. W. P. 390.—Tayler, Cartwright, & Begbie.

94. A postponement of a sale under a notice issued for that purpose need not necessarily be made for thirty days. *Ranee Sobass Konwuree and another* v. *Sheo Lall Singh and others.* 29th Aug. 1850. 5 Decis. N. W. P. *272.—Begbie, Lushington, & Deane.

95. Notices of postponement of a sale, if continuing in one unbroken series of postponement from the day of sale originally appointed, need not contain a notice of thirty days. *Rajah Ooditnarain Singh, Appellant.* 28th Sept. 1842, quoted in 5 Decis. N.W. P. 272.

96. But if the series of such notices be broken, it is necessary to issue a fresh proclamation at thirty days. *Ibid.*

(*m*) *Objections.*

97. An objection to a sale made by a Collector under the provisions of Act XII. of 1841, on the ground that fifteen full days had not elapsed from the date of notice to that of sale, not having been brought to the notice of the Commissioner, cannot be received by the Court.[1] *Keylaschunder Kanoongo and another* v. *Collector of Chittagong.* 30th Aug. 1845. S. D. A. Decis. Beng. 281. —Gordon.

98. Objections to a coming sale in satisfaction of a decree, alleging possession on the part of the objector, must be inquired into before

[1] Act XII. 1841, ss. 18. 25.

the sale can take place. *Mt. Hur Soondree Gopteea, Petitioner.* 27th Jan. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 75.—Reid.

99. Objections to a sale in execution of a decree, founded on its having been previously satisfied, cannot be heard after such sale when held after due notice. *Sreemuttee Dasee, Petitioner.* 20th Jan. 1848. 1 S. D. A. Sum. Cases, Pt. ii. 125.—Tucker, Barlow, & Hawkins.

100. Claims to property sold in satisfaction of a decree, if not advanced before the sale, cannot be entertained summarily, merely because preferred within one month after such sale: such claims can only be urged in a regular suit.[1] *Motee Lall, Petitioner.* 12th June 1848. 1 S. D. A. Sum. Cases, Pt. ii. 142.—Hawkins.

100*a*. In a sale held in execution of a decree of Court, objections, not urged summarily to the Court which ordered the sale, may be heard in a regular suit for the reversal of such sale. *Juseem-o-Zuman Chowdhree* v. *Gournath Shah and another.* 26th July 1848. S. D. A. Decis. Beng. 721.—Dick, Jackson, & Hawkins.

(*n*) *Forms to be observed in.*

101. No sale for the recovery of arrears of revenue can be said to have been effected, until it has been confirmed by the Commissioner under Sec. 24. of Reg. XI. of 1822. *Janokeenath Chowdree* v. *Collector of Moorshedabad.* 10th July 1845. S. D. A. Decis. Beng. 227.—Barlow.

102. A sale for arrears of rent due on a *Mukarrarí* tenure can only be made publicly by the Government officers.[2] *Ranee Chundra Bullee Kowaree* v. *Ranee Kummul Kowaree and others.* 9th July 1846. S. D. A. Decis. Beng. 268. — Tucker, Reid, & Barlow. *Kishenchundur Pundit and others* v. *Isurchundur Nyaruttun and others.* 8th April 1848. S. D. A. Decis. Beng. 298.—Tucker, Barlow, & Hawkins. *Pertabnurain Raee* v. *Muckoo Bibi and others.* 6th May 1848. S. D. A. Decis. Beng. 420. —Tucker, Barlow, & Hawkins.

103. A *Zamíndár* wishing to bring a *Patní* to sale, must present petitions to the Judge and Collector respectively; as, though Sec. 10. of Reg. VII. of 1832 modifies Sec. 8. of Reg. VIII. of 1819, with respect to the acts of public officers, it makes no mention whatever of any modification of the acts to be done by the *Zamíndár* under Sec. 8. of Reg. VIII. of 1819. *Lootf-o-nissa Begum* v. *Kowur Ram Chundur and others.* 28th Aug. 1849. S. D. A. Decis. Beng. 371.—Dick, Barlow, & Colvin.

104. Under the provisions of Reg. VIII. of 1819, as modified by Cl. 1. of Sec. 16. of Reg. VII. of 1832, the sale of a *Patní Talook* for arrears should be held in the Collectorate, within *the revenue jurisdiction* of which, and not by the Collector of the district within the jurisdiction of *the Civil Court* of which, the *Talook* is situated. *Rammohun Banerjee* v. *Radhanath Pandah.* 9th May 1850. S. D. A. Decis. Beng. 194.—Dick, Jackson, & Colvin. *Rammohun Banerjee and others* v. *Radhanath Pundah.* 27th June 1850. S. D. A. Decis. Beng. 320.—Barlow, Jackson, & Colvin.

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2. *Sale of a Receipt.*

105. The farmer of an estate attached by the Collector paid rent to the *Zamíndár*, and got his receipt,

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[1] The time of one month, allowed for objection, is only applicable when a sale is impugned on the score of irregularity or informality, as laid down in Sec. 5. of Reg. VII. of 1825, not when exception is taken to it under Secs. 3 and 4 of that Regulation.

[2] See Reg. VII. 1799, s. 15.

which receipt, under the circumstances, he sold, conditioning to refund the purchase-money should the purchaser fail to recover it. In an action brought by the purchaser against the Collector, the *Zamindár*, and the farmer, the farmer was held liable to satisfy the demand. *Lutchmee Put and another* v. *Syud Inait Hosein and others.* 28th Feb. 1848. S. D. A. Decis. Beng. 118.—Rattray, Jackson, & Currie.

3. *Sale of a Claim.*

106. The transfer of a claim by sale and purchase *pendente lite* was held to be no bar to the adjudication of such claim.[1] *Mt. Jysree Kowur* v. *Bhugwunt Narain Sing and others.* 24th Dec. 1847. 7 S. D. A. Rep. 413.—Rattray.

SALT.

1. Two despatches of salt belonging to different merchants, and covered by separate *Ravánehs*, having been weighed together, and declared liable to confiscation by the Salt officers and Zillah Judge under the provisions of Secs. 41. and 113. of Reg. X. of 1819; it was held, by the Sudder Dewanny Adawlut, that the quantity belonging to each merchant ought to have been weighed separately; and the order for confiscation was reversed accordingly. The Court further held, that the Salt *Dárôghah*, having examined the despatches, and endorsed the *Rawánehs*, and allowed them to pass his station, acted irregularly in subsequently stopping them. *Ram Rana Beoparee, Petitioner.* 27th Jan. 1835. 1 S. D. A. Sum. Cases, Pt. i. 5.—Braddon & D. C. Smyth.

2. The Sudder Dewanny Adawlut ruled that the Civil Courts cannot carry into execution orders of a Salt Agent which have been determined to be illegal. *Superintendent of Salt Chokees of Bullooah, Petitioner.* 12th May 1845. 1 S. D. A. Sum. Cases, Pt. ii. 69.—Rattray, Reid, & Dick.

3. The Circular Order of the Board of Customs, Salt and Opium, No. 680, dated the 11th July 1835, prescribing rules of practice for the observance of its subordinate officers beyond the requirements of the Regulations and laws enacted by the Governor-General in Council for the government of the whole of the territories under the Presidency of Fort William in Bengal, cannot be pleaded in bar of a legal penalty incurred under Sec. 41. of Reg. X. of 1819, on account of contraband salt. *Nabkishn Fotedar, Petitioner.* 17th March 1846. 2 Sev. Cases, 339.—Rattray, Dick, Tucker, & Reid.

4. A conviction of certain parties, under Sec. 27. of Act XXIX. of 1838, for not giving information of illicit salt works upon their estate, is not vitiated by the omission to hold the local investigation prescribed by Sec. 99. of Reg. X. of 1819. *Bishennath Biswas and others, Petitioners.* 11th May 1847. 1 S. D. A. Sum. Cases, Pt. ii. 98.—Tucker, Barlow, & Hawkins.

5. The judicial proceedings of a Superintendent of Salt *Chokís* and of the Zillah Judge were (on appeal) set aside by the Sudder Dewanny Adawlut, as void *ab initio*, on the ground of no notice having been served on the owner of the salt, previous to investigation instituted by the Superintendent, and the adjudication of confiscation of salt as contraband by the Zillah Judge. *Buldeb Sha Chaudhuri, Petitioner.* 9th April 1850. 2 Sev. Cases, 555. —Barlow, Colvin, & Dunbar.

6. The confiscation of salt as contraband is illegal without an information or charge, and issue of notice thereupon, against the owner of the salt. *Government, Petitioner.* 30th

[1] Two precedents were referred to by the Court, but they have not been reported.

Sept. 1850. 3 Sev. Cases, 111.—Colvin, Barlow, & Dunbar.

7. The fine eligible upon such suit or information against a *Charhandár* (supercargo) in charge of a despatch of salt is purely a personal one. *Ibid.*

SAMEDASTKHATT.—See Stamp, 6.

SANAD.—See Grant, *passim.*

SAPTAPADÍ.—See Husband and Wife, 2.

SATÁKHATT.—See Evidence, 79 *et seq.*

SATÍ.—See Criminal Law, 209.

SAYER.—See Action, 117; Dues and Duties, 2.

SECONDARY EVIDENCE.—See Evidence, 119 *et seq.*

SECURITY.

I. Hindú Law, 1.
II. In the Courts of the Honourable Company, 2.
1. *Generally*, 2.
2. *For Costs.*—See Costs, 42 *et seq.*
3. *For Appearance.*—See Criminal Law, 186.
4. *For Good Conduct.*—See Criminal Law, 65.

I. Hindú Law.

1. By the Hindú law, a son is always liable to fulfil the security engagement of his deceased father, as regards the amount of principal; and if a special agreement be made for interest, then he is also liable for interest. *Moolchund Nundlall* v. *Khrisna and another.* 27th June 1844. Bellasis, 54.—Bell, Hutt, & Browne.

II. In the Courts of the Honourable Company.

1. *Generally.*

2. If the existence of a will be disputed between the heirs of a party deceased, security may be demanded under Sec. 4. of Reg. V. of 1799. *Bamun Das Mookurjee and others, Petitioners.* 3d July 1845. 1 S. D. A. Sum. Cases, Pt. ii. 69.—Tucker, Reid, & Barlow.

3. A demand for security before giving possession of the property of an intestate to his proved heir, and, in the absence of other claims, is not warranted by the provisions of Sec. 7. of Reg. V. of 1799. *Mudhoobun Doss, Petitioner.* 14th Dec. 1846. 1 S. D. A. Sum. Cases, Pt. ii. 88.—Reid.

3*a*. The provisions of Secs. 4. and 5. of Reg. V. of 1799, apply only to cases of disputed succession among heirs at law, and not to parties claiming upon special grounds. *Ranee Bhoobun Mye Debbea, Petitioner.* 25th May 1847. 1 S. D. A. Sum. Cases, Pt. ii. 102.—Tucker & Hawkins.

4. Security cannot be demanded under Reg. V. of 1799, in cases of dispute between the heirs of a party deceased, unless occurring immediately upon such party's death. *Bhugwuttee Dasea, Petitioner.* 14th Aug. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 116.—Tucker, Barlow, & Hawkins.

4*a*. Where the petitioner had possession of the property in dispute under an award made conformably to Act XIX. of 1841, without being required to furnish any security; it was held, that, in that case, the circumstances of the case were not such

as to come within the provisions of Reg. V. of 1799. *Babu Gopal Singh, Petitioner*. 10th Dec. 1849. 2 Sev. Cases, 509.—Jackson.

5. It is illegal to issue a proclamation in bar of alienation of property, *pendente lite*, before requiring security from the defendant. *Gobind Pershad Khan and another, Petitioners*. 12th June 1848. 1 S. D. A. Sum. Cases, Pt. ii. 141.—Hawkins.

6. *A* (the defendant) brought to sale the rights of *B* in certain lands in satisfaction of a decree. *B* lodged the money due under the decree, and procured an order from the Court reversing the sale. The Judge by whom the sale was reversed directed that the sum deposited should not be liable to attachment on account of any other decree; but *A*, the decree-holder, being dissatisfied with this order, appealed to the Sudder Dewanny Adawlut, and procured from that Court the reversal of the Judge's order, and the confirmation of the sale. The sale having been thus upheld, *B* applied to get back the money deposited for the purpose of staying the sale; but *A* had other claims upon *B*, and applied to the Principal Sudder Ameen to attach the money in deposit belonging to *B*. This application was at first rejected; but when *A* notified his intention of appealing, the Principal Sudder Ameen directed that the amount claimed by *A* should be detained during the period allowed for the appeal. Although the money was thus attached, *B* was improperly allowed to take it out of Court on the security of *C* (the plaintiff), and when *A* pressed his claim on the security, *C* brought an action against *A* for recovery of the money which had been realized from him, under the security bond, and to be protected from a further demand made upon him by *A* under the same document. *A* had never appealed from the above-mentioned order, although he had declared that he would appeal, and had thus obtained the order for the attachment during the period allowed for the appeal. Held, that the failure to appeal did not extinguish the security bond. *Dyaram* v. *Saunders*. 4th Feb. 1850. 5 Decis. N. W. P. 27.—Tayler, Begbie, and Lushington.

SELOTRÍ.—See LAND TENURES, 13.

SENTENCE. — See CRIMINAL LAW, 67 *et seq.* 187 *et seq.*

SEQUESTRATION.

1. Motion that the Sheriff be directed to sell certain sequestered property, consisting of houses, and pay the proceeds in satisfaction of certain costs awarded against the owner. Held (in accordance with the practice in England), that real estate could not be sold under a writ of sequestration. *Fabian* v. *Walter*. 26th Jan. 1848. Taylor, 275.

SERVAMÁNIYAM. — See LAND TENURES, 8.

SETTLEMENT.

I. OF LANDS, 1.
  1. *In Bengal*, 1.
  2. *In the North-western Provinces*, 5.
  3. *In the Madras Presidency*, 8.
II. MARRIAGE SETTLEMENT. — See HUSBAND AND WIFE, 4. 8, 9.

I. OF LANDS.

1. *In Bengal*.

1. To establish a claim under Reg. I. of 1795, it is incumbent on the

claimant to prove his title as village *Zamíndár* of the lands forming the ground of action. *Sumeshur Pandee and others* v. *Rajah Gopal Surn Sing*. 24th Sept. 1845. 7 S. D. A. Rep. 211.—Rattray, Tucker, & Barlow.

2. Where it appeared to the Court, on the perusal of the report of the Sudder Board to the Government, recommending a Settlement of the *Mahåll* in question with the appellants, that the recommendation was grounded on the fact of long-continued possession; it was held, that, under the provisions of Sec. 5. of Reg. XIII. of 1825, the decision of the Government, sanctioning the Settlement, must be upheld by the Courts of Judicature. *Goor Dyal Singh and others* v. *Mirza Ameen Beg and another*. 26th July 1849. S. D. A. Decis. Beng. 309.—Dick, Barlow, & Colvin.

3. A Collector has no authority to annul by his own act a Settlement for invalid *Jágír* lands made by him, and sanctioned by the Sudder Board of Revenue. *Mt. Soorjao and others* v. *Sheo Sing*. 6th June 1850. S. D. A. Decis. Beng. 271.—Barlow, Jackson, & Colvin.

4. Under Secs. 13. & 30. of Reg. VII. of 1822, a claimant to a right of Settlement may prefer his claim of title before the Collector, or he may institute a regular suit in a Court of Justice; but if he do not prefer his claim, he can have no just claim to any benefit from the possession until he has established his right. *Hureeram Bukshee and others* v. *Ramchundur Banerjee and others*. 15th Aug. 1850. S. D. A. Decis. Beng. 407.—Dick, Barlow, & Colvin.

2. *In the North-western Provinces.*

5. Held, that Sec. 4. of Reg. XIII. of 1825, extended to all *Lákhiráj-dárs* by paragraphs 7. and 8. of a letter of Government, No. 204 of Oct. 14th, 1839, applies to all suits, in which a plaintiff sues for reversal or alteration of a Settlement, made upon a resumption, upon any other ground than that of his being himself the holder of the old *Lákhiráj* tenure, or the representative of the holder, and, on that account, claiming a preference in having the Settlement made with him at half *Jama*. *Syud Muzhur Nubhee and others* v. *Radha Kishen and others*. 16th May 1850. S. D. A. Decis. Beng. 209.—Dick, Jackson, & Colvin.

6. Where a Principal Sudder Ameen had decreed the alteration of the village six-monthly papers in opposition to the record of the current Settlement; it was held, that he had contravened the law by so doing, Cl. 3. of Sec. 14. of Reg. III. of 1822 providing explicitly for the maintenance of the rights recorded by the Settlement officers under the powers conferred by Cl. 1. of the same Section, leaving the party who may deem himself aggrieved to seek redress by a regular suit in the Courts, to try the right, and for the alteration of the Settlement record. *Shunkur Rai and others* v. *Koonjbeharee and others*. 8th July 1850. 5 Decis. N. W. P. 159.—Begbie, Deane, & Brown.

7. The Government may make a Settlement with whomsoever they please, if no *Zamíndárí* title has been sued for or acknowledged within twelve years from the decease of the farmer of the first Settlement. *Anon.* 19th Sept. 1844. Quoted in 5 Decis. N. W. P. 353.—Full Court. *Ulup Rai and others* v. *Meer Sukhawut Ali and others*. 23d Sept. 1850. 5 Decis. N. W. P. 352.—Begbie, Deane, & Brown.

3. *In the Madras Presidency.*

8. Land not entered in the Circuit Committee Accounts, on which the permanent Settlement was made, either as *Zeroytí* or *Inaám*, is not included in that assessment.[1] *Vut-*

[1] This case was decided on the authority

chavoy Vencata Jagapaty Rauze v. *Cotagerry Boochiah.* 8th Oct. 1849. S. A. Decis. Mad. 71.—Hooper & Morehead.

SHERIFF.

I. Generally, 1.
II. Writs of Execution.—See Execution, *passim.*

I. Generally.

1. Certain lands (secured by a post-nuptial settlement in trust to the sole use of the wife) were seized by the Sheriff for a debt of the husband. Subsequent to the seizure, a change of trustees was effected. The new trustee forthwith entered on the lands, in order to take possession, and, upon the Sheriff holding over, brought his action. Held, that (assuming an action would lie against the Sheriff for so continuing in possession after notice of such devolution of title and entry), still notice thereof ought in the first instance to have been given to him. *Smith* v. *Mackilligan.* 14th July 1847. Taylor, 165.

SHERIFF'S OFFICER.—See False Imprisonment, 1.

SHEWAIT.—See Religious Endowment, 17.

SHIBEH-I-UMD.—See Criminal Law, 18 *et seq.*; 75. 108 *et seq.*

SHIP.

I. In the Supreme Courts, 1.
1. *Charter Party,* 1.
2. *Freight,* 2.
3. *Pilot,* 3.
4. *Registry,* 4.
II. In the Courts of the Honourable Company, 6.

I. In the Supreme Courts.

1. *Charter Party.*

1. By one of the covenants of the Charter Party it was provided, that if the Charterers (plaintiffs), or their agents at Rangoon refused to give a full cargo of teak timber to the vessel, they should pay a damage of Rs. 4000 to the defendant, as the probable amount of freight expected to be brought by the vessel; likewise, that if the defendant, or the commander of the vessel, refused to fulfil the contract in bringing up a cargo of teak timber for the plaintiff, the defendant, should pay a damage of Rs. 4000 to the Charterers. Held to be in the nature of penalties, and not liquidated damages. *Agabeg* v. *Jellicoe.* 2d Feb 1847. Taylor, 51.

2. *Freight.*

2. Where the defendants, agents of a certain ship, gave the plaintiffs a shipping order authorizing them to ship a certain quantity of goods by that vessel, and the captain excluded a portion of the goods; it was held, that such breach of contract by the captain rendered the agents liable for the additional freight, which the plaintiffs were compelled to pay by reason of their sending the goods by another vessel; and that, although the plaintiffs sent in an account debiting the captain and owner with the amount. *Malcolm and others* v. *Arbuthnot and others.* 19th Nov. 1849. 1 Taylor & Bell, 89.

3. *Pilot.*

3. A pilot and his men (who had been signaled on board a vessel for the purpose of piloting her up to Calcutta), finding nearly the whole

of *Rajah Vencata Niladry Row* v. *Vutchavoy Vencataputty Rax.* 3 Knapp. 23.

of the crew of the vessel disabled from scurvy, assisted also, with the knowledge and assent of the captain, in navigating the vessel, kept watch at night, and worked as seamen. In a suit for salvage and extra pilotage; it was held, that the pilot and his men were entitled to remuneration beyond that of mere pilotage. *In the matter of the Barque Athole.* 16th Nov. 1847. Taylor, 199.

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4. *Registry.*

4. Equity will not interfere to determine the right of possession of a British ship between the registered owner and his vendee, defendants at the suit of a party holding the ship under a lien. *Stalkartt* v. *Mackey and others.* 6th July 1846. Montriou, 227.

5. A ship built in a foreign port in India in 1817, within the limits of the Company's Charter, by foreigners, and which sailed under foreign flags until the year 1838, when it was then and thereafter owned by, and belonged to, British subjects resident at Bombay, was held to be entitled, under the Proclamation of the Governor-General in Council, and Act X. of 1841 (passed in pursuance of the powers granted by the 3d and 4th Vict. c. 56), to be registered at Bombay as a British ship, for the purposes of trade within the limits of the Company's Charter. *Crawford* v. *Spooner.* 15th Dec. 1846. 6 Moore, 1. 4 Moore Ind. App. 179.

II. In the Courts of the Honourable Company.

6. The Charterer of a vessel, acting in good faith, and making every endeavour to complete his intended voyage, and being prevented from doing so in consequence of the defective state of the vessel (for which its owner had made himself expressly responsible), the owner has no claim for any portion of the period during which the vessel remained in the Charterer's hands. *Elson* v. *Mooteeul Ruhman.* 5th Dec. 1849. S. D. A. Decis. Beng. 433.—Barlow, Colvin, & Dunbar.

SHIWÁÍT.—See Religious Endowment, 17.

SHRAD.—See Hindú Widow, 12 *et seq.*

SHUBHAH-I-AMD.—See Criminal Law, 18 *et seq.*; 75, 108 *et seq.*

SHUFAAH.—See Pre-emption, *passim.*

SLAVERY.

I. Generally, 1.
II. In Criminal Cases.—See Criminal Law, 210.

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1. Generally.

1. The Sudder Dewanny Adawlut is prohibited by Sec. 2. of Act V. of 1843 from enforcing any rights arising out of an alleged property in the person and services of another as a slave. *Ghoolam Jeelanee* v. *Mt. Sundul and others.* 28th Feb. 1845. S. D. A. Decis. Beng. 40.—Dick. *Ramdas Chuckerbuttee and others* v. *Pran Kishen Deyb.* 27th March 1845. S. D. A. Decis. Beng. 82.—Dick.

2. The relation existing between *Bhugguts* and *Gosains*, and the services rendered by the latter to the former in the performance of rites and ceremonies, is not one of slavery, and does not come within the provisions of Act V. of 1843. *Gudadhur Gosain and others* v. *Gowree Surmah and others.* 27th May 1847. S. D. A. Decis. Beng. 176.—Hawkins. *Odhiram and another* v. *Dya and others.* 18th Aug. 1847. S. D. A. Decis. Beng. 444.—Tucker.

SOLUHNÁMEH.—See Compromise, *passim.*

SPECIAL APPEAL.—See Appeal, 2. 105 *et seq.*

SPECIAL COMMISSIONER.—See Jurisdiction, 107.

SPLITTING OF CLAIM.—See Action, 88 *et seq.*

STAMP.

I. Generally, 1.
II. On Deeds.—See Deed, 15 *et seq.*
III. On Documentary Evidence. See Evidence, 68. 73. 76 *et seq,* 86 *a,* 87. 105. 109.

I. Generally.

1. A mere withdrawal of a suit by the plaintiff, to which withdrawal neither the defendant nor his *Vakíl* were parties, and no provision for the costs of the suit having been made, does not entitle the plaintiff to have the value of the stamp paper on which he had brought his suit refunded, as it might have been had the case been decided on a *Rází námeh. Baboo Dumodhur Doss* v. *Maha Rajah Narain Gujpattee Raj.* 23d Nov. 1846. 1 Decis. N. W. P. 197.—Thompson, Cartwright, & Begbie.

2. Applications on the part of Government to recover the stamp duties incurred in pauper suits may be made on plain paper. *Government, Petitioner.* 30th Jan. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 89. —Court at large.

3. The application of Government to recover a fine under Sec. 11. of Reg. XXVII. of 1793, from parties making illegal collections, should be on a stamp of eight-annas, as for a miscellaneous petition. *Government, Petitioner.* 13th April 1847. 1 S. D. A. Sum. Cases, Pt. ii. 95.—Rattray, Tucker, & Reid.

3 *a.* Held, that in a suit by a mortgagor for possession of mortgaged property, the amount of stamp-paper for the plaint must be calculated on the value of the property, and not on the sum for which the property was mortgaged. *Raghunathpurshad, Petitioner.* 1st June 1847. 2 Sev. Cases, 389.—Hawkins.

4. A party appealing from only a portion of a decree may write his petition on a stamp of less value than that of the original plaint, if it be sufficient to cover the value of the interest involved in the appeal. *Prankishen Gopt* v. *Rajkishwur Deb.* 24th June 1847. 7 S. D. A. Rep. 347.—Hawkins.

5. A party having brought his suit on a copy of a deed insufficiently stamped, cannot be permitted to file stamp paper of a value to make up the deficiency. *Bulwunt Singh* v. *Lalgee.* 28th Dec. 1847. 2 Decis. N. W. P. 385.—Tayler.

6. A *Sámedasthhatt* does not require to be written on a stamped paper to render it a valid document under the provisions of Sec. 10. of Reg. XVIII. of 1827. *Trekumdass Bhekareedass* v. *Byramjee Eduljee and another.* 21st Jan. 1848. Bellasis, 78.—Bell, Simson, & Le Geyt. *Doolubdass Kasseedass* v. *Kumroodeen Bukurbhaee.* 21st Jan. 1848. Bellasis, 79.—Bell, Simson, & Le Geyt.

7. A plaintiff has a perfect right to remit a portion of his claim, and to sue for the remainder, without being liable to the provisions of Sec. 16. of Reg. XVIII. of 1827 for a breach of the Stamp Regulations. *Syud Jain Wulud Abdool Kadir* v. *Syud Mahomed and others.* 20th June 1848. Bellasis, 96.—Bell, Simson, & Hutt.

7 *a.* In a suit for the recovery of

an instalment due on a bond (the justness of the instalment being admitted by the defendant), the amount of stamps, leviable under the Circular Order of the 14th May 1847, is to be equal to the amount of the instalment only, and not the whole amount of the bond, the validity of which is not called in question. *Kamila and another, Petitioners.* 13th Feb. 1849. 2 Sev. Cases, 449.—Jackson.

8. Exhibits and lists of witnesses are not required to be accompanied by stamp fees* when filed before *Ameens* by parties. *Moonshee Fuzul-ul-Karim and another, Petitioners.* 3d April 1849. 3 Sev. Cases, 29.—Jackson.

8*a*. But Reg. X. of 1829 requires stamp fees for exhibits and lists of witnesses when filed in the *Civil Courts. Ibid.*

9. Stamp paper for an. attested copy of a decree may be received in the *Sirishtah* of the deciding Judge before the preparation of the original decree. *Reed, Petitioner.* 17th April 1849. 2 Sev. Cases, 491.—Barlow, Jackson, & Colvin.

10. On a party filing stamps, in person or by *Vakíl*, for a copy of an order passed on the execution of a decree in his case, he is to be furnished with such copy, without a petition for the same, whether he be stated in the *Rúbakárí* to have been in attendance or not at the hearing, personally or by *Vakíl. Reed* v. *Rani Prameswarri and another.* 11th May 1849. 2 Sev. Cases, 497.—Court at large.

11. *Quære*, whether copies of the plantiff's *Bahí Khatta* "to be kept with the record" should not, under Construction No. 1372, be stamped. *Brijkishore* v. *Juggernathpershad.* 5th Aug. 1850. 5 Decis. N. W. P. 216.—Begbie, Deane, & Brown.

STATUTE.

1. The Statute 8th and 9th Vict. c. 109, amending the law relating to games and wagers, does not extend to India. *Ramloll Thackoorseydass and others* v. *Soojumnull Dhondmull and another.* 28th Feb. 1848. 6 Moore, 300. 4 Moore Ind. App. 339.

2. The Statute of Limitations, 21st Jac. I. c. 16, extends to India. *The East-India Compang* v. *Oditchurn Paul.* 6th Dec. 1849. 7 Moore, 85.

3. The statute 9th Geo. IV. c. 14. (extended to India by Act XIV. of 1840) was held to apply to an action pending in the Supreme Court at Calcutta at the time of its introduction into India. *Ibid.*

SUBPŒNA.—See Jurisdiction, 5; Practice, 15. 160.

SUBSISTENCE MONEY.—See Debtor, 17.

SUCCESSION.

1. Right of succession cannot be decided in a summary manner, except under Acts XIX. and XX. of 1841, or when the heirs of deceased parties to suits are called upon to appear. *Byjnath Bose, Petitioner.* 22d April 1845. 1 S. D. A. Sum. Cases, Pt. ii. 67.—Court at large.

2. The provisions of Secs. 4. and 5. of Reg. V. of 1799 apply only to cases of disputed succession among heirs at law, and not to claimants on special grounds, adoption for instance. *Ranee Bhoobun Mye Debbea, Petitioner.* 25th May 1847. 1 S. D. A. Sum. Cases, Pt. ii. 102. —Tucker & Hawkins.

3. Security cannot be demanded under Reg. V. of 1799 in cases of disputes between heirs of a party deceased, unless occurring immediately upon his death. *Bhuguwuttee Dassea, Petitioner.* 14th Aug. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 116. —Tucker, Barlow, & Hawkins.

4. Where a widow has formally consented to the succession of a party,

whether as a natural-born or an adopted son, to the estate of her husband, a collateral heir is competent to sue to contest such succession during the lifetime of the widow. *Bhyrub Chundur Chowdhree* v. *Kalee Kishwur Raee and others.* 3d Aug. 1850. S. D. A. Decis. Beng. 369.—Colvin.

SUDDER AMEEN.—See JURISDICTION, 98, 99.

SUDDER DEWANNY ADAWLUT. — See JURISDICTION, 68 note, 80. 90.

SULAH NÁMEH. — See COMPROMISE, *passim.*

SUMMARY AWARD.—See ACTION, 11.

SUNNUD.—See GRANT, *passim.*

SUPERINTENDENT.—See RELIGIOUS ENDOWMENT, 7 *et seq.* 22 *et seq.*

SUPREME COURTS.—See JURISDICTION 1 *et seq.* 42, 43.

SUPPLEMENT.—See PRACTICE, 179, *et seq.*

SURETY.

I. GENERALLY, 1.
II. LIABILITY OF SURETY, 4.

I. GENERALLY.

1. On the death of a surety of a lessee, the lessor cannot oust the lessee on the plea of his not giving another surety, unless the lessee were in arrears. *Maha Rajah Juggut Indur Bunwaree Lal Buhadur and others* v. *Deehoo Raee.* 15th July 1846. S. D. A. Decis. Beng. 276. —Reid, Dick, & Jackson.

2. The surety for a tenant, dying, the landlord can come upon the heirs of the surety and his property, for the period of the lease, and therefore has no right to require new security, unless it be stipulated in the deeds. *Ibid.*

3. Where principals, who had obtained an order for possession of property under the provisions of Reg. V. of 1799, made over such property temporarily to their sureties; it was held, that the Civil Courts could not summarily interfere in a dispute between the principals and sureties, in regard to the proper discharge of the trust, the proper remedy being a regular action. *Dwarka Doss, Petitioner.* 1st June 1847. 1 S. D. A. Sum. Cases, Pt. ii. 104.—Hawkins.

II. LIABILITY OF SURETY.

4. Sureties of a treasurer of a Zillah Court were held to be responsible for defalcations and embezzlements made during the period they had guaranteed the faithful and honest administration of his office by the treasurer. And this was notwithstanding an acquittance from all liability granted by the Zillah Court. *Tarnee Purshaud Nayarutna Buttacharjya, Petitioner.* 19th June 1840. 1 S. D. A. Sum. Cases, Pt. i. 36.—Rattray, Braddon, D. C. Smyth, & Halhed. (Tucker and Reid dissent.)

5. The order of a Zillah Judge releasing a surety (who had given *Málzámini* security for a defendant under Cl. 1. of S. 5. of Reg. II. of 1806) from liability on the dismissal of a suit in the Court of original jurisdiction, was held not to prevent the execution against the same surety of a decree passed by an Appellate

Court, in reversal of the judgment of the Zillah Court. *Ram Gopal Jewun, Petitioner.* 9th Dec. 1840. 1 S. D. A. Sum. Cases, Pt. i. 50.—Reid.

6. The respondent offered half the security for a salt *Dároghah* required by the Salt Agent, and was accepted as his surety, and deposited security to that amount. The amount and deposit were specified in the bond, but an indefinite condition, general, indeterminate, and vague, was inserted in the bond, binding the surety to an amount unknown and unlimited. The *Dároghah* having defalcated, the Salt Agent sued the respondent for the whole amount of the defalcation, contending that he had bound himself to answer for his principal for an unlimited amount. Held, that the respondent was only liable for the amount of his security, and that the indeterminate condition in the latter part of the bond could not be allowed to prevail against the previous determinate specification of the amount of security and deposit thereof.[1] *Salt Agent of Tumlook* v. *Mudun Mohun Mitr.* 20th Nov. 1845. S. D. A. Decis. Beng. 427.—Dick.

7. The holder of a decree being put in possession of a property on security, the surety, on refunding, after the reversal of the decree, mesne profits to the successful appellant, is exonerated from the demand of others entitled to share in them, but not parties to the suit. *Mt. Bibi Imamun and others* v. *Mt. Bibi Mujoo and another.* 14th June 1847. 7 S. D. A. Rep. 341.—Rattray, Dick, & Jackson.

8. *A*, a *Gumáshtah*, drew a *Hundí* on *B*, his principal, which was cashed by *C* on the surety of *D*, which surety was effected by a simple indorsement on the back of the *Hundí*. The *Hundí* was accepted by *B*, but he becoming afterwards insolvent, the *Hundí* was returned to *C*, who sued all the parties. The Courts below decreed against the principals, but exonerated *D* from liability, because the surety was not executed on a separate piece of paper bearing the requisite stamp; but the Sudder Dewanny Adawlut remitted the case, in order that evidence might be taken as to what was customary amongst *Mahájuns* in regard to becoming surety by a simple indorsement on a *Hundí*. *Govind Ram* v. *Chedee Lal and others.* 13th Dec. 1849. S. D. A. Decis. Beng. 456. —Barlow, Colvin, & Dunbar.

[1] In this case the Court remarked, that the case of the *Salt Agent of the Twenty-four Pergunnahs* v. *Chunder Seekhur Roy and others*, 27th Jan. 1840, 6 S. D. A. Rep. 279, was precisely in point, though the printed report was very defective, nay, incorrect; for the Judges expressly directed that the sureties should be responsible only to the amount that they had specifically become security and pledged their property.

SUTTEE.—See CRIMINAL LAW, 209.

SWÁMÍ BHOGAM.—See ASSESSMENT, 19.

SWINDLING.—See CRIMINAL LAW, 211.

TALAB-I-MUWÁSIBAT. — See PRE-EMPTION, 12 *et seq.*

TALBÁNEH.—See PRACTICE, 231*a*.

TALOOK.—See ASSESSMENT, *passim*; LAND TENURES, 17, *et seq.*

TALOOKDÁR.

1. The purchasers of a *Talookdári* right, at sale under Act VIII. of 1835, in satisfaction of a summary

decree for rent, cannot assume to themselves the power of ousting an under-tenant without application to the proper authority. *Gour Soondur Chatterjee and another* v. *Bishennath Shah.* 30th March 1848. S. D. A. Decis. Beng. 268.—Barlow.

TAULIYAT.—See Religious Endowment, 22.

TAXATION.—See Costs, 46.

TAZÍR.—See Criminal Law, 18*a*.

THIEVES, KILLING.—See Criminal Law, 75.

THIRD PARTY.— See Action, 29. 33.; Appeal, 61*c*, 62; Costs, 40, 41; Evidence, 139; Practice, 145 *et seq.*

THUGGÍ.—See Criminal Law, 212.

TITLE.

1. *A*, being in possession of lands, as purchaser, under deeds of sale from *B*, the person last seised, was forcibly ousted from possession by *C* and *D*, who set up a title to the lands, under an alleged deed of gift from *B*. *A* made a complaint to the Criminal Court, and, under an order of that Court, was again put into possession; *C* and *D* being directed to institute a suit in the Civil Court to establish their claim, which they accordingly did, relying upon their title, and impeaching the deeds of sale. In such circumstances, it was held, by the Judicial Committee of the Privy Council, reversing the decree of the Sudder Dewanny Adawlut of Bengal (without prejudice, however, to any question which might arise between *A* and any other party claiming under *B*), that it was incumbent on *C* and *D*, to prove their right to the lands claimed before they could put *A* to proof of his title. *Ram Rutton Rae* v. *Furrooh-oon-Nissa Begum and another.* 26th June 1847. 4 Moore Ind. App. 233.

2. In a suit for the price of fish taken from a tank, in the possession of the plaintiffs, by the defendants, who claimed the proprietary right in the tank; it was held, that plaintiffs' title, being founded on possession, should be maintained until the alleged right of the defendants had been judicially established. *Lokenath Purshad Hujra* v. *Mt. Soobudra Dassea and another.* 20th Sept. 1847. S. D. A. Decis. Beng. 560. —Tucker, Barlow, and Hawkins. *Teekoo Muhtoon and others* v. *Tulsee Singh and others.* 19th Feb. 1848. 7 S. D. A. Rep. 441.— Rattray. *Kunyah Misser* v. *Baboo Nunkoo Singh and others.* 25th June 1849. 4 Decis. N. W. P. 188. —Thompson & Begbie.

3. A title founded on possession will be maintained against a claim of right until the latter be judicially established. *Ramdial Beoparee* v. *Gopal Dass and another.* 5th Sept. 1849. 4 Decis. N. W. P. 303.— Lushington.

4. Lands were adjudged to parties who had held them under a just title for more than twelve years, through fraud in their original acquisition was pleaded.[1] *Gooroo Govind Chowdhree* v. *Bhowany Sunker Sircar.* 22d Jan. 1848. S. D. A. Decis. Beng. 26. Tucker, Barlow, & Hawkins.

5. A party, who had been in possession of certain property upwards of thirty years, and who produced the title deeds of the said property, though unable to prove that the said property had been bequeathed to him, or that he had purchased it, and

[1] Reg. II. 1805, s. 3. Cl. 1.

though such deeds were unindorsed, was still held to be the rightful owner thereof, under the provisions of Sec. 1. of Reg. V. of 1827. *Beebee Rajeh-beebee* v. *Syud Fuzlayallee and an-another.* 2d March 1848. Bellasis, 81.—Bell, Simson, & Le Geyt.

6. Conflicting claims to the property of a deceased person, under Act XIX. of 1841, must be decided by the Courts, and possession given to the party having the best title. *Koonjbeharee Singh and others, Petitioners.* 5th June 1848. 1 S. D. A. Sum. Cases, Pt. ii. 140.—Hawkins.

7. A title, disputed on special grounds, cannot summarily avail against the general right of heirship. *Shufautoollah, Petitioner.* 5th June 1848. 1 S. D. A. Sum. Cases, Pt. ii. 140.—Hawkins.

8. An order, giving possession of lands, made by the *Foujdárí* (Police Magistrate's) Court, upon a charge of a breach of the peace, coming before the Magistrate, is not a determination respecting the rights to such lands. *Mt. Imam Bandi and another* v. *Hurgovind Ghose.* 30th June 1848. 4 Moore Ind. App. 403.

9. Where there is an unity of title, dispossession on various dates is no bar to a single action. *Ram Ruttun Rae and others, Petitioners.* 2d Aug. 1847. 1 S. D. A. Sum. Cases, Pt. ii. 114. — Hawkins. *Doorga Das Buttacharjah and others* v. *Mt. Seetul Munnee Dibbea.* 19th July 1848. S. D. A. Decis. Beng. 696. —Hawkins.

10. The plaintiff brought his action for the value of certain trees cut down by the defendants. The latter acknowledged that the land on which the trees grew was included at the Settlement in the plaintiff's village, though the said land did, in fact, belong to their village, and that they had been in the habit of cutting down the trees growing thereon. The Moonsiff decreed in favour of the plaintiff, but the Principal Sudder Ameen reversed his decree, on the ground that the plaintiff should establish his right to the land before he could sue for the value of the trees. Held, on special appeal, that, under the provisions of Sec. 18. of Reg. VII. of 1822, it was for the defendants to have sued to set aside the Collector's order, and so to establish their right to the land, if they claimed it, and not for the plaintiff, who had already obtained the land by order of the Settlement officer. The case was accordingly remanded. *Rawut Ghunsam Singh* v. *Durriao Singh and another.* 8th Jan. 1849. 4 Decis. N. W. P. 8.—Tayler, Thompson, & Cartwright.

11. *A* purchased a village sold for arrears of revenue, and at the time of Settlement gave in a petition to have *B* and *C* registered as proprietors of three-fourths of the estate, the remaining one-fourth being in *A*'s name. *A* sued *B* for his share of the collections made by *B* for a certain year. Held, on special appeal, that an order of the Principal Sudder Ameen, directing *A* to establish his right to possession before a decree could be passed for his share of the profits, was not inconsistent with any law, or usage having the force of law, or any practice of the Courts, so as to bring the case within the scope of a special appeal. *Futteh Ali Khan* v. *Mohumed Hoossein Khan.* 27th Feb. 1849. 4 Decis. N. W. P. 34.—Thompson & Cartwright. (Tayler dissent.)[1]

12. Before a party can be dispossessed of his rights by an act of Settlement, the party who seeks to oust him must make out a stronger title, and a mere abstract right, without actual possession, is not sufficient.

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[1] Mr. Tayler considered it contrary to the practice of the Courts to require the plaintiff, who was under direct engagements for the Government revenue, to institute a suit to establish possession, because at the time of Settlement he was acknowledged by the defendants and the Revenue authorities, when they admitted him to engage for the revenue, to be in possession of the estate.

Meer Sukhawut Ali and others v. *Rai Baneedial Singh and others*. 1st May 1850. 5 Decis. N. W. P. 106 *d*.—Begbie.

TOMB.—See RELIGIOUS ENDOWMENT, 18.

TORTURE.—See CRIMINAL LAW, 14. 202.

TRANSFER.

I. OF SUITS.—See ACTION, 157 *et seq*.

II. BY MORTGAGORS.—See MORTGAGE, 69.

III. OF DECREES.—See PRACTICE, 326 *et seq*.

TRESPASS.—See DAMAGES, 14, 15.

TRIAL.—See CRIMINAL LAW, 76 *et seq*. 203 *et seq*.; JURISDICTION, 75 *et seq*.; PRACTICE, 209 *et seq*.

TROVER.

1. A bill of sale and assignment of goods, described as being in certain warehouses belonging to *A*, was given by him for the loan of a sum expressed to have been paid on the day of the date thereof. Upon an action of trover brought against the assignee of *A*, who had seized the goods, it appeared in evidence that a portion only of the goods was in the warehouse specified at the date of the sale, and that no part of the loan was paid on that day, the same being discharged by instalments a few days afterwards; whereupon the Judges of the Supreme Court at Calcutta held, that there had been no valid transfer, and, consequently, no conversion, and gave an interlocutory judgment and verdict in accordance with such view. Held, by the Judicial Committee of the Privy Council, on appeal from such judgment and verdict, and from an order refusing a new trial, that the judgment and verdict were not justified by the evidence, and must be reversed, and a new trial granted. *Muttyloll Seal* v. *O'Dowda*. 29th Feb. 1848. 4 Moore Ind. App. 382.

TRUSTEE.

I. IN THE SUPREME COURTS, 1.

II. IN THE COURTS OF THE HONOURABLE COMPANY, 4.

I. IN THE SUPREME COURTS.

1. One *A* (being at the time indebted to the defendants *B* and *C*), by a post-nuptial settlement conveyed to a trustee, for the sole and separate use of his wife, certain property, the title-deeds whereof subsequently passed into the hands of the defendants, who refused to give them up, claiming a lien upon them in respect of their advances to *A*. Six years after the conveyance was made, *A* took the benefit of the Insolvent Act. Held, that the legal estate being in the trustee, he was entitled to maintain trover against the defendants. Held, also, that whether the deed were fraudulent or not under the 13th Eliz. c. 5. the rights of creditors could not be discussed under the plea of "not possessed" in this form of action. *Smith* v. *Willis and another*. 14th July 1847. Taylor, 159.

2. A Hindú appointed two out of his eight sons trustees for the performance of his will, which (*inter alia*) contained directions for the performance of certain religious ceremonies. A decree of the Supreme Court removed the two eldest sons from the trusteeship, and directed that the other sons should be appointed trustees for the performance of the ceremonies. Two of the latter subsequently died. Held, that

the trust under the decree survived, and that the Court could not appoint any new trustees except on a case shewing that the addition of such new trustees was necessary. *Ramtonoo Mullick and others* v. *Ramgopaul Mullick and others.* 13th Aug. 1849. 1 Taylor & Bell, 64.

3. And semble, in deciding the question of necessity, the Court would have regard to general evidence of the requirements of the Hindú law respecting the performance of the religious ceremonies. *Ibid.*

II. In the Courts of the Honourable Company.

4. *A* sued *B* upon a bond debt, and obtained a decree against him for the amount. *B* appealed from this decree to the Sudder Dewanny Adawlut. By a deed of arrangement entered into by *A* and his brother *C*, after the commencement of the suit, *C* became entitled to a six-anna share of the debt. Pending the Appeal to the Sudder Dewanny Adawlut, *A* entered into a compromise with *B*, postponing the payment of the amount recovered by the decree, for three years, and foregoing altogether interest upon the principal. This was done without the privity or consent of *C*. *B* failed to pay the amount within the stipulated time, and proceedings were taken by *A* against him, but he had not realized the amount of the decree. In a suit by *C* against *A* to make him chargeable for the six-anna share in the decree, the Sudder Dewanny Adawlut held, that *A* was chargeable to *C* for such share, with interest. Upon appeal to England such decree was reversed; the Judicial Committee of the Privy Council holding, that *A* must be treated as a trustee for *C*; and that in the absence of fraud upon the *cestui que trust* in executing the compromise, or that it was not beneficial for all parties, he was responsible only to *C* for such amount of the debt as had been recovered, or, without his wilful default, might have been recovered. *Doorga Persad Roy Chowdry* v. *Tarra Persad Roy Chowdry.* 4 Moore Ind. App. 452.

UNDIVIDED HINDÚ FAMILY.

1. Where the appellants had acknowledged separate possession of certain lands and villages, and it was in evidence that the families lived and ate separately; it was held, that such was tantamount to an acknowledgment and proof of separate interests as to the entire property. *Baboo Nundlal Burm'h and others* v. *Mt. Neela Buttee and another.* 16th Aug. 1847. S. D. A. Decis. Beng. 442.—Rattray, Dick, & Jackson.

2. If a member of an undivided Hindú family buy articles for his own sole and private use and gratification, and execute bonds promising to pay the value of the articles, the coparceners of the debtor are not answerable. *Veerappen Servacaren* v. *Brunton.* 23d Dec. 1850. S. A. Decis. Mad. 124.—Thompson & Morehead.

UNDIVIDED PROPERTY.

I. Alienation of.—See Ancestral Estate, 1, 2, 3. 6, 7; Wájib-al-Arz, 3; Will, 10.

II. Evidence of Property being joint.—See Evidence, 135, 136.

III. Partition of.—See Partition, *passim*.

URALER.—See Religious Endowment, 11, 12.

USAGE.—See Inheritance, 16 *et seq.* 32, 33.

USUFRUCT.—See Mesne Profits, *passim*.

USURY.

1. The defendants bound themselves, by two deeds denominated *Souda-patra*, in consideration of an advance of Rs. 150, to deliver to the plaintiff, on a certain day, three hundred *maunds* of fine *Urwa* rice, or in default of delivery to pay the value at the rate of the day. They having failed to perform their engagements, the plaintiff sued to recover the value of three hundred *maunds* at one rupee per *maund*. Held, that this was a case of contract to supply grain, and not an attempt to evade the provisions of Sec. 9. of Reg. XV. of 1793 relating to usury, and that the contract was to be enforced to its full extent. *Nund Kishwur Tewaree* v. *Mahomed Wasiloodeen and others*. 12th Nov. 1845. S. D. A. Decis. Beng. 417. —Reid, Dick, & Jackson.

2. The advance of a loan on mortgage and conditional sale in Government securities, at par, which were in fact at a discount at the time, was held, under the circumstances, to be no evasion of the law respecting usurious interest enacted by Reg. XV. of 1793.[1] *Kunhya Lal Thakoor* v. *Ras Munee Dossea*. 15th July 1846. 7 S. D. A. Rep. 264. —Reid, Dick, & Jackson.

3. To an action for recovery of arrears of rent due to the plaintiff, under a sub-lease of a *Pergunnah*, the defendant pleaded, that the sub-lease was part of a loan transaction, for the purpose of securing to the plaintiff an illegal interest upon the loan, and was void under Beng. Reg. XV. of 1793. The Courts in India held, that it was an usurious transaction, and dismissed the action. Upon appeal, this decision was confirmed by the Judicial Committee of the Privy Council. *Wise* v. *Kishenkoomar Bose and another*. 12th Feb. 1847. 4 Moore Ind. App. 201.

4. The plaintiff advanced Rs. 600 on certain lands being farmed to him: the deed executed showed the annual produce of the lands to be Rs. 142; of which the plaintiff was to be allowed Rs. 127 as interest on the amount advanced by him, and to pay the remaining Rs. 15 to the mortgagors. Held, that the terms of the deed not shewing any attempt to evade the law, though the stipulation was certainly illegal, the principal should be allowed, but not the interest. *Sheikh Uzhur Ali and another* v. *Sheo Patuk Lal*. 21st Aug. 1847. S. D. A. Decis. Beng. 459. —Tucker & Hawkins. (Barlow dissent.)[2]

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[1] There was an appeal from this decision, and after hearing the arguments on both sides the Lords of the Judicial Committee advised the Counsel for the respondent not to press for a decision, but to accept the principal and interest, and give back the estate, which had come into possession of the respondent on the foreclosure of the mortgage and conditional sale. As their lordships intimated that the opinion of the Court was against the respondent, this course was adopted, and Counsel on both sides furnished minutes of a decree which were arranged by their lordships on the 25th Feb. 1852, and were to the following effect, viz. that the appellants should repay to the respondent the principal sum actually lent, together with interest, and interest upon the interest, from the date of the last payment of interest, at the rate of ten per cent.; that the respondent should account for the mesne profits of the mortgaged estate during the time it had been in her possession, with interest on the same at the rate aforesaid, and, on receiving the balance of the said accounts, should surrender the said estate to the appellants; but that if the appellants failed to pay the balance which should be found due, after the adjustment of accounts, at the time fixed by the Sudder Dewanny Adawlut for such payment, then that the mortgaged estate should become the absolute and purchased property of the respondent. The costs of the appeal to the Privy Council were directed by their lordships to be paid by the respondent. Under the above circumstances the point of usury may perhaps be still considered as an open question, and it seems pretty clear that, so far as regards the other point raised in the case with regard to the notice of foreclosure (see *suprà*, Tit. MORTGAGE, Pl. 55. 64), the decision of the Sudder Dewanny Adawlut holds good.

[2] And see the case of *Khedoo Lal Ka-*

5. The plaintiff advanced the sum of Rs. 4600 to the defendants, and, for re-payment, received a farm of two villages, the amount rents of which were estimated at Rs. 2,500. It was agreed between the parties that the farmers should pay, out of the Rs. 2,500, Rs. 907 Government revenue, Rs.552 interest on the debt, Rs. 250 expenses of collection, Rs. 201 repairs of embankments, Rs. 24 *Khurch Dhakila*, Rs. 566 to be paid to the proprietors, or credited in part principal of debt. It was also agreed that if the assets fell short of Rs. 2,500, the deficiency should be made good by the mortgagors. They did fall short, and the plaintiff sued for the deficiency. Held, that there was no attempt to extort illegal interest. *Baboo Sheosuhyee Lal* v. *Baboo Ubheelakh and others*. 16th Dec. 1848. S. D. A. Decis. Beng. 872.—Barlow, Jackson, & Hawkins.

6. A contract of farm for a time certain, with a condition that there should be after that term no future claim for profit or loss as to a prior transaction, on account of which the farm was given, cannot be considered as usurious; as, whether the amounts due were realized or not, the farmer could not continue his holding; hence there was a risk and no usurious attempt.[1] *Ruttun Munnee Surma and others* v. *Syud Bukht*. 3d May 1849. S. D. A. Decis. Beng. 134. —Dick, Barlow, & Colvin.

tri v. *Rattan Khatri*. 3 S. D. A. Rep. 261, Sir R. Barlow, in recording his dissent, observed—"I consider that the stipulation of payment of Rs. 127 per annum as profit,—*Intifa* is the word used,—is a term introduced to evade the law prohibiting excessive interest;" and he accordingly would have dismissed the suit under Sec. 9. of Reg. XV. of 1793.

[1] The case of *Mohunt Teekumbhartee* v. *Syud Ishan Ali* (4 S. D. A. Rep. 251), cited by the Judge, was held not to apply; for in that case there was evidently an attempt to evade the law, and obtain usurious interest, under the special plea that the lease was to continue until payment in full should be made from other sources.

UZARDÁR.—See ACTION, 21; APPEAL, 62*a*; PRACTICE, 145 *et seq.*

VAKÁLAT NÁMEH.—See PLEADER, 15 *et seq.*

VAKÍL.—See PLEADER *passim.*

VALUATION OF APPEAL.—See APPEAL, 63 *et seq.*

VALUATION OF SUIT.—See ACTION, 121 *et seq.*

VENDOR AND PURCHASER. —See SALE, *passim.*

WAGDAN.—See HUSBAND AND WIFE, 2.

WAGER.—See GAMING, *passim.*

WÁJIB-AL-ARZ.

1. The revenue document termed a *Wájib-al-Arz* is not a legislative enactment: it is a contract entered into by the parties concerned at the time of Settlement, and in enforcing its provisions the Court should proceed upon the same principles as if they were carrying out the conditions of any other agreement. *Goora Rai and others* v. *Sheonarain Singh and others*. 7th Jan. 1850. 5 Decis. N. W. P. 1.—Begbie, Lushington, & Robinson.

2. And where a party has not signed the *Wájib-al-Arz*, nor in any other manner acquiesced in the arrangement recorded by that paper, he is not bound by its conditions. *Ibid.*

3. The fact that the *Wájib-al-Arz* contained a provision that the several proprietors might transfer their shares, was held not to give the widow of a sharer in joint property the power of alienating her late husband's share contrary to the Hindú law, though at the Settlement her name alone was recorded for such

share.[1] *Runjeet Singh and others* v. *Mt. Hur Koonwur and another.* 21st Jan. 1850. 5 Decis N. W. P. 16. —Begbie, Lushington, & Robinson.

4. A *Bíghádam* tenure was mortgaged by the representatives of the proprietary community, and although the names of the headmen only appeared in the deed, the mortgage transaction was entered into by them in behalf and with the consent of all, and the shares of all were duly recorded afterwards, with the assent of the mortgagees, in the administration paper of the Settlement. The plaintiffs, who were under-sharers in the tenure, alleged that the mortgage demands had been satisfied by the usufructuary profits, and sued, in the name and behalf of the whole proprietary, for redemption of the entire property, admitting that there were others who had not joined them in the suit, from absence and other causes. It was decided by the Lower Court, that the facts of the plaintiff's possession, and of their participation in the mortgage, were clearly proved from the *Wájib-al-Arz* and other documents and evidence, and that they were entitled to redeem their own and the others' shares as specified in the *Wájib-al-Arz*. Held on appeal, by the Sudder Dewanny Adawlut, that the decision was good *quoad* the plaintiffs individually; but the mortgage bond not having been produced, and the plaintiffs having put forward, as the foundation of their proof, the supplementary detail in the *Wájib-al-Arz*, which contained a distinct specification of the mortgage shares, without any specific conditions for their release, that the mortgagee was entitled to take his stand on the same document, and to refuse redemption until the individual mortgagor appeared to claim it, the plaintiffs having no claim on the mortgagee beyond the interests which they had themselves recorded. ***Mulik Basah*** v. ***Mt. Dhana Beebee*** *and others.* 5th Aug. 1850. 5 Decis. N. W. P. 220.—Begbie, Deane, & Browne.

[1] In this case the Court observed—"The members of an agricultural community may bind themselves, just as any other persons may do, by agreeing to particular conditions; and there is no reason why these conditions should not be recorded in a *Wájib-al-Arz* as well as in an *Ikrár námeh*, or similar private deed. Such an arrangement would of course be independent of law so far as the agreeing parties were concerned; but the Court do not perceive that, when this settlement was made, the *Zamíndárs* had any intention of conferring a right on the widow which previously she did not possess. The settlement papers record generally the right of alienation, a very important and necessary provision, for reasons unconnected with the present case; but the Court do not infer therefrom that any new privilege was granted to widows: on the contrary, they observe that the late settlements, in this as well as in other cases, have gone hand in hand with the Hindú and Muhammadan laws in carrying out one great object, namely, the exclusion of strangers."

WAKF.—See RELIGIOUS ENDOWMENT, 18 *et seq.*

WARÁSAT NÁMEH.—See MORTGAGE, 3.

WARD.—See COURT OF WARDS, *passim*; GUARDIAN AND WARD, *passim*; INFANT, 4 *et seq.*; LIMITATION, 78, 80 *et seq.*

WARRANT OF ATTORNEY.

1. *A* gave to *B* a bond conditioned to repay Rs. 25,000 and all future advances, with interest, on demand; he also gave a warrant of the same date to enter up judgment on the bond. Held, that the condition of the bond was a defeazance of the warrant of attorney, and the latter void under the 9th Geo. IV. c. 73. s. 69, because without written defeazance; and the judgment and execution under it were vacated. *Chapman and others* v. ***Monteith*** 6th Feb. 1846. Montriou, 76.

2. Held, that the 69th section of the Insolvent Act applies to all warrants to confess, not merely of insolvents,—and *inter partes*, as well as in favour of creditors or third persons. *Ibid.*

3. Held, that the judgment confessed under a warrant with defeazance as above, being in a penal sum, is a continuing security for future breaches or advances; but execution cannot be for more than the sum actually due when the writ issues: the terms of the defeazance require actual demand before enforcing the warrant. *Ibid.*

4. Semble, as a precaution, creditors should always, where practicable, require the attendance of a separate professional adviser on behalf of the debtor, when receiving from the latter a warrant to confess or a cognovit. *Ibid.*

WATAN.—See Inaám, 2; Inheritance, 25; Mortgage, 2.

WÁSILÁT.—See Mesne Profits, *passim*.

WATERCOURSE.

1. Plaintiffs sued for damages on the ground that the defendants had, by force, prevented them from repairing a watercourse, and also claimed the sole right of repairing the watercourse which ran through the respective lands of the plaintiffs and defendants. The question of damages was thrown out, none having been proved; but the Judge decreed that both parties should have the right of repairing the watercourse throughout its whole length. Held, that this right could not be granted, and that all that the Courts could do was to declare the plaintiffs' right to the benefit of the watercourse running through their estate, and that it would of course be open to them to sue for damages should any act of the defendants, in connection with the watercourse, result in their injury. *Baboo Tilukdharee Singh and another* v. *Ajnashee Koonwur and others.* 12th Feb. 1848. S. D. A. Decis. Beng. 78.—Tucker, Hawkins, & Currie.

WIDOW.—See Hindú Widow, *passim*; Inheritance, 6 *et seq*.

WILL.

I. Of Hindús,[1] 1.
  1. In the Supreme Courts, 1.
    (*a*) *Generally*, 1.
    (*b*) *Executor*.—See Executor, 7.
  2. In the Courts of the Honourable Company, 6.
    (*a*) *Generally*, 6.
    (*b*) *Executor*.—See Executor, 13, 14.
II. Of Muhammadans.—See Executor, 10.
III. Of Europeans.
  1. In the Supreme Courts.—See Executor, 1 *et seq*.

I. Of Hindús.

1. In the Supreme Courts.

(*a*) *Generally*.

1. A residuary bequest in the will of a Hindú to "my grandsons by daughters" was construed to exclude grandsons born after the testator's death. *Bycauntnauth Sandial* v. *Golucknauth Sandial.* 25th Feb. 1846. Montriou, 142.

2. A will of a Hindú, in the form of a balanced account of specific receipts and disbursements to be made, was held to be a general disposition, the balance specified representing the general residue. *Ibid.*

3. Semble, the will of a Hindú is

[1] See, as to the validity of the wills of Hindús, Vol. I. of this work, p. 612, note.

not subject to English rules of construction inconsistent with Hindú law or usage. *Ibid.*

4. A Hindú, by his will, after giving the interest of Rs. 50,000 to his wife for life, bequeathed as follows: "At her death my two daughters shall receive the amount in equal shares. If they bear children, they are to receive the same as their children become of age; and if they do not bear children, they are not to receive the same, and *A* and *B* are to receive this amount.. Thus—2d *item*, My eldest daughter *C* shall receive Rs.25,000, and *D* Rs.25,000; in the whole, Rs. 50,000—they are not to receive these sums now, but on sons having been born of them, and becoming of age, they are to receive these sums, and they are not to receive the interest also now." *C* bore children, and her eldest son had attained majority; *D* died childless. Held, that there was no evidence of an intention by the testator to confer a benefit of survivorship, nor any ground for implying cross-remainders; that the gifts of Rs. 50,000 in both clauses were distributable, and on fulfilment by one daughter of the condition attached, viz. production of a son, and his subsequently attaining majority, the daughter so producing was entitled to her own share, although the other daughter might not have also fulfilled the condition. As *C*, therefore, had given birth to a son, who had attained majority, she was entitled to her moiety of each bequest; but as *D* had died childless, the gift to her had lapsed, and fell into the residue. Held, also, that the mother's right became vested on her eldest son attaining majority, and that interest became payable upon the legacies from the period of their so vesting. *Sree Motee Naboodoorga Dabee* v. *Connyloll Tagore and others.* 31st March 1847. Taylor, 61.

5. A Hindú Rájah made a will which was duly executed and attested. He afterwards, by inserting marginal notes and otherwise in his own hand, considerably altered his will, and then gave it, so altered, to his attorney, for the purpose of drawing up a new will. When completed, the Rájah took possession of this last document: what was done with it by him, or what became of it, was never discovered. On the 31st Oct. 1844 the Rájah committed suicide. A will with two codicils was then set up: the former was stated to have been drawn by him on the day previous to his death, and the latter on the day of his death. The will only was attested and executed, viz. on the latter date. This last will differed in many material respects from any of the preceding. Proceedings were instituted on the equity and ecclesiastical sides of the Supreme Court; issues at law were directed; and the Court found the last mentioned will and codicils "not proven." On further directions it was argued that the first will stood revived. Held, that this depended on the testator's *intention*, which was a question of fact; and as the evidence was altogether deficient in that respect, there was no ground for presuming, from the supposed destruction at an unknown time of the second will, an intention to revive the first, especially while there was proof of an execution *in fact* of a materially differing will. *Surnomoye Dossee* v. *the East India Company.* 1847. Taylor, 208.

2. In the Courts of the Honourable Company.

(*a*) *Generally.*

6. Where a Hindú made a will, and left property acquired by him to his eldest son, to be the proprietor thereof, and, in a subsequent clause directed him to manage the same to the satisfaction of his brothers, but that "if dissension should arise, which, God forbid, then, according to the *Shastras* they (that is, the

brothers) will take their shares;" the Court held, that the eldest son was entitled to the property under his father's will, on the ground that great caution should be used in allowing a subsequent clause of a will to contradict and nullify what is previously stated in such will to be the will and intent of the testator. And it being, moreover, clear that such was the intent of the testator, since the object contemplated by the nullifying clause would, in the present instance, have been more easily attained by the testator's not writing any will at all. *Rajah Oojoodhya Ram Khan* v. *Rajah Ram Chunder Khan and others.* 14th March 1845. S. D. A. Decis. Beng. 95.—Reid, Dick, & Gordon.

7. A Hindú has the power of devising his acquired property by will to his eldest son.[1] *Ibid.*

8. A Hindú domiciled in the north-western provinces of Bengal, by an instrument in the nature of a testamentary disposition, gave his widow a life estate in all his property, and after her decease he gave one moiety thereof to his brother *B*, and after *B*'s death to *B*'s sons, *C* and *D*, and the other moiety to *E* and *F*, the sons of a deceased brother of the testator. *B* and *C* died in the lifetime of the tenant for life. *C* and *D* were divided brothers. *C*'s widow claimed his share. Held, by the Judicial Committee of the Privy Council, that *C* and *D* took vested interests in *B*'s moiety, as tenants in common, the actual enjoyment of the expectant interest being postponed till the termination of the life estate, and that, under such circumstances, it was not necessary that *C*'s share should be reduced into possession during his lifetime, to enable his widow to succeed to it.[2] *Rewun Persad* v. *Mt. Radha Beeby.* 19th Feb. 1847. 4 Moore Ind. App. 137.

9. Semble, where a Hindú, by an instrument in the nature of a testamentary disposition, gave his widow a life estate in all his property, and, after her decease, gave a moiety thereof to his brother *B*, and, after the brother's death, to *B*'s sons, *C* and *D*, and *B* and *C* died in the lifetime of the tenant for life: the property will be deemed to be given or bequeathed to *C* and *D*, so far as their rights are concerned, and to be divided property, and not held by them in coparcenary, their rights being founded upon the deed or will, which virtually operates as a division of the property given. *Ibid.*

10. A *Zamíndár* in Tinnevelly died, leaving a will by which he bequeathed two-thirds of his landed estate to the children of his first wife, and one-third to the son of a second wife: no division of the property, real or personal, had taken place up to the time of hearing the suit. Held, that such will was invalid, an unequal distribution of property not being recognised by the Hindú law, unless partition had been effected, during the lifetime of the father, with the unanimous consent of all the sons, and full and independent possession of the respective shares enjoyed.[3] *Mootoovengatachellasamy Ma-*

[1] In this case the Court observed—"With respect to the third question, that *Mohun Lal Khan* could devise his property to his eldest son, legally, the Court entertain no doubt whatever. It has been unanimously ruled in the affirmative by the Judges of this Court, in their correspondence with the Judges of the Supreme Court, when consulted by the latter on this very point."

[2] Their Lordships remarked in the judgment in this case—"We have no intention whatever to disturb the doctrine of the Hindú law, that a widow, succeeding as heir to her husband, cannot recover property not in possession of her husband. But we think it has not been shewn, in this case, that the disputed property was not in possession, according to the meaning of that term in the Hindú law, nor that the doctrine applies to a property, where the husband had a vested interest, under a will or deed, and of the actual enjoyment thereof, postponed during the lifetime of another."

[3] 2 Str. H. L. 9. 11.

nigar v. *Toombayasamy Maniagar and others.* 23d July 1849. S. A. Decis. Mad. 17.—Thompson & Morehead.

11. A Hindú, as was alleged, executed a will in favour of his grandson, with the consent of his wife and daughters, and died; the grandson also died, and his widow claimed the property. Semble, that if it were satisfactorily established that the wife and daughters of the deceased *originally* gave their consent to the execution of the will in favour of the grandson, and aided in giving effect to the same, the right of the grandson to succeed to the property in dispute would be affirmed, notwithstanding the objections made thereto by the said persons *subsequently* to his death. *Sevacawmy Ummal* v. *Vaneyummal and others.* 8th July 1850. S. A. Decis. Mad. 50.—Hooper.

WITCHCRAFT.—See CRIMINAL LAW, 156.

WITHDRAWAL OF CLAIM.—See PRACTICE, 449, 450; RELINQUISHMENT, 1 *et seq.*

WITNESSES.—See EVIDENCE, 2, 3. 39 *et seq.*

WOUNDING.—See CRIMINAL LAW, 82, 83. 213.

WRIT.

I. CAPIAS AD RESPONDENDUM, 1.
II. CAPIAS AD SATISFACIENDUM, 3.
III. HABEAS CORPUS.—See HABEAS CORPUS, *passim.*
IV. CERTIORARI.—See EVIDENCE, 2.
V. OF EXECUTION.—See EXECUTION, *passim.*

I. CAPIAS AD RESPONDENDUM.

1. A writ of *Capias ad respondendum* requiring a defendant to put in special bail within eight days, must be executed within Calcutta or ten miles thereof. *Nusseerwonjee Ruttonjee* v. *Tarronjee Ruttonjee.* 5th April 1847. Taylor, 67.

2. If the defendant at the time of issuing such writ be within those limits, and subsequently depart thereout, so that he cannot be arrested, the Sheriff must apply for further instructions. *Ibid.*

II. CAPIAS AD SATISFACIENDUM.

3. A writ of *Capias ad satisfaciendum* in an action of detinue for chattels, operates as an extinguishment of the right to them. *Hasleby* v. *Owen.* 1st May 1848. Taylor, 378.

ZÍ HAKK.—See ACTION, 142; JURISDICTION, 44.

ZILLAH JUDGES, JURISDICTION OF.—See JURISDICTION, 91 *et seq.*

END OF THE DIGEST.

GLOSSARY.

N. B. THIS GLOSSARY IS RESTRICTED TO THE NATIVE TERMS, OCCURRING IN THE PRESENT VOLUME, WHICH ARE NOT COMPRISED IN THE GLOSSARY APPENDED TO THE FIRST VOLUME OF THE DIGEST.

A.

Avak Chitti (H. اوك چتهي), A respondentia bond.

B.

Bahi Khatta (H. بهي كهاتا), A day-book kept by merchants.

Barát Námeh (P. برات نامه), A record, a register. An assignment on the revenue.

Bashinda (P. باشنده), An inhabitant.

Batta (H. بته), Difference, or rate of exchange. Discount.

Báz Námeh (P. باز نامه), A deed of relinquishment.

Bázár (P. بازار), A market. A market-place.

Bhaggat (H. بهگت), A religious mendicant. A reputed wizard.

Bhaoli (H. بهاولي), Distribution of the products of the harvest, in previously stipulated proportions, between the landlord and tenant.

Bhog Bandah (S. भोगबन्धक), A kind of bond or mortgage in which the article pledged or mortgaged may be converted to use, as land, houses, cattle, trees, &c., the profits of which are to be appropriated by the lender or mortgagee in lieu of interest.

Bigháhdam (H. بيگها دام), Settlement of the revenue at so much per *Bighá*, especially on villages held in common, in which the lands are apportioned in *Bighás*, and the assessment proportionably rated.

Bullútidár (Mar. बलुतेदार), A village officer or servant receiving a share of the crop.

Burdana (S. वर्द्दन), Supporting. Subsistence.

C.

Chandni (P. چندنا چندينه) Sundry, miscellaneous; applied to a division of the *Sair*.

Charandár (H. چرندار) A passenger. A supercargo.

D.

Decreedár (Eng. P. دكري دار), A holder of a decree of Court.

Decreenawís (Eng. P. دكري نويس), A writer of decrees of Court.

Dharmakarta (S. धर्म्मकर्त्ता) The head or manager of a temple.

Dusserah, properly *Dasahara* (S. दशहरा) A festival.

F.

Fard Patidári (H. فرد پتي داري), A list or description of lands held by a *Patidár*.

Fásid (A. فاسد), Vicious. Imperfect. Invalid.

Foujdári (P. فوجداري), The office or jurisdiction of a criminal Magistrate or Judge.

G.

Gaddí Nishín (H. گدي نشين), Sitting on a pillow. A sovereign. A superintendent of a religious endowment.

Ganga Jamna (S. गंगायमुना), A peculiar mode of adjusting an account of borrowed money, interest paid to the creditor until the whole debt is discharged, and, on the other hand, interest allowed to the debtor on all the instalments he may pay.

GosainMaháráj(S.गोस्वामीमहाराज्या), A religious mendicant.

Gueny (Karn. गेणी), Rent.

H.

Halí (H. حالي), A bondsman, one serving as a labourer in payment of a debt, until the debt is discharged.

Hat Chittah (Ben. हातचिटा), A letter or note in the handwriting of the person issuing it.

Huwaladár (H. حواله دار), A sub-renter, the occupant of a *Hawálah.*

I.

Ikbál Daawa (A. اقبال دعوي), Confession of judgment. An acknowledgment of want of right in the subject-matter of a suit.

Inaám Izáfat (A. انعام اضافت), A stipendiary grant. Lands, or the produce thereof, granted free from tax in remuneration for services rendered.

Intifá (A. انتفاع) Utility. Profit. Advantage.

Ism Farzí (A. اسم فرضي), One in whose name a purchase is made, the name of the real purchaser not appearing in the transaction.

J.

Jawáb-iMújibát(P.جواب موجبات), An answer to a petition of appeal, or to the reasons of appeal, to be filed by the respondent.

K.

Kadím Kashtkar (P.قديم كاشتكار), An hereditary cultivator.

Kárnaven(Mal.कारणवान्),The head of a family.

Khám (P. خام), Unripe. Immature. Farmed.

Kháttá (H. كهاتا), An account-book. A ledger. A diary.

Khurch Dhakila (A. خرج داخله), Customary expenses.

Koorikanom Paramba (Mal. कुरिकाणम् पारम्बा), An estate held either in mortgage or upon an advance, with compensation when given up for improvements.

Kotrí (H. كوٹهري), A house. A banking-house.

Kowur (S. कुमार), A son of a prince. Generally used to denote the second son of a Rájah.

Kubala (A. قباله), A contract or deed. A written agreement.

Kula (S. कुल), A tribe.

Kuntí (Perhaps *Kúthí*), The crop belonging to, or contracted for, by the *Kúthí, i.e.* the Factory.—*Sed quære.*

L.

Lateeal(H. لاٹهي والا),A club man.

Lumburdár (Eng. P. لمبر دار), A number-holder. The actual payer of revenue on the part of the villagers.

M.

Maafí (A. معافي), Lands free from assessment.

Maafidár (P. معافي دار), A holder of a *Maafi* tenure.

Mahábír (S. महावीर), The god Mahavíra.

Mahálkarrí (Mar. महालकरी), A respectable man.

Mahr Námeh (P. مهرنامه), A deed of settlement of dower.

Makándárí (P. مكان داري), The ownership of a place. The office of superintendent of a mosque.

Mehtur (P. مهتر), A prince. A headman. A menial servant of the lowest description.

Mhar (Mar. महार), A low-cast man employed in villages in menial offices.

Mílá (S. मेला), A fair.

Moheteram (S. महत्राण), Land assigned rent-free to religious or respectable persons by *Zamíndárs*.

Muharram (A. محرم), The name of the first month of the Muhammadan year. The mourning-festival observed in that month by the Musulmáns of India in remembrance of Hasan and Husain, the grandsons of the Prophet.

Mujabbát, (A. موجبات), Causes or reasons for appeal.

Muth (S. मठ), A temple; a convent; an establishment of religious persons under a head.

N.

Náib (A. نائب), A vicegerent. A deputy.

Nawáb (A. نواب), A governor, prince, or viceroy.

Ním Huwáladár (H. نيم حواله دار), A holder of half a *Huwálah*.

Ním Ousut Talookdár (H. نيم اوسط تعلق دار), A holder of half an *Ousut Talook*.

Nú Ábád (P. نو آباد), Newly peopled or cultivated. Lands cultivated after, and not included in, a Settlement.

O.

Ousut Talook (A. اوسط تعلق), An interlying or intermediate *Talook*.

Ousut Talookdár (P. اوسط تعلق دار), A holder of an *Ousut Talook*.

P.

Paddy, An English corruption of the Karnata term *Bhattá*, Rice in the husk.

Pán (H. پان), The betel-nut.

Pánbatta (H. پان بتا), A customary present of *Pán* made to, and exacted by, certain parties on particular ceremonial occasions.

Pardah Nishín (P. پرده نشين), Sitting behind a curtain. Applied to women whose station in life does not admit of their being exposed to the gaze of strange men.

Patní Bhága (S. पत्नी भाग:), A division of property according to wives.

Péshgí (P. پيشگي), A money advance.

Péshkár (P. پيشکار), A Magistrate. A Collector of duties in a town. A deputy or headman.

Pírmurshid (P. پير مرشد), An aged instructor. A family priest.

Putra Bhága (S. पुत्रभाग), A division of property according to sons.

R.

Rájgí (P. راجگي), Sovereignty.

Rawáneh (P. روانه), A custom-house passport. A permit.

Rukah (A. رقعه), A short letter or note. A note of hand.

S.

Saptapadí (S. सप्तपदी), Marriage.

Saranjám (P. سرانجام) A species of land tenure.

Sarhadd Bandí (P. سرحد بندي), A boundary record.

Satá (A. صتا), A preparatory instrument in the nature of articles of agreement.

Sazáwal (P. سزاول), A monthly collector of revenues.

Seh Patnídár (H. سه پتني دار), An under-tenant of a *Darpatnídár*.

Selotrídár (Perhaps S. श्रोत्रियदार), A holder of land granted to learned Brahmans.—*Sed quære.*

Souda Patra (S. सौदंपत्र), A deed of ownership.

Stanikam Mírási (Mal. स्थानीक मिराशी), The hereditary dues of a manager of a temple.

Suwár (P. سوار), A horseman.

T.

Talab-i Muwásabat (P. طلب مواثبة), Immediate demand, particularly as applied to the right of pre-emption.

Talbáneh (P. طلبانه), Daily pay to constables.

Tamassuk (A. تمسّك) A bond or obligation in writing.

Tarwaad (Mal. तरवाद्), A family.

Tatammah Suwál (A. تتمّه سوال), A supplementary plaint.

Tauzí (A. توجيع), A revenue account, shewing the quota of each payer of revenue.

Thíkadár (H. تهيكادار), A farmer.

U.

Uraler (Mal. उरालन), A proprietor of a temple.

Utavali (Mal. उत्पावली), Surplus proceeds of an estate after realising interest of the money advanced.

Uzardár (P. عذردار), An objector. A third party intervening in a suit.

Uzardárí, (P. عذرداري), The acts of an *Uzardár* are so designated; *e. g.* the petition of a third party is called an *Uzardárí* petition.

V.

Vaishnava, (S. वैष्णवः), A Hindú professing the preferential worship of Vishnu.

W.

Wagdan, (S. वाक्दान), Betrothal.

Wájib-al-Arz (A. واجب العرض), A written representation or petition.

Wani (S. वाणी), A chandler.

Warásat Námeh (P. وراثت نامه), A deed of acknowledgment of heirship.

Y.

Yak Musht (P. يك مشت), One handful. A payment stipulated to be made in the lump at a certain time.

Z.

Zeroytí (A. زراعتي), Cultivated land in general, or cultivation other than garden cultivation.

Zíhakk (A. ذي حق), Allowances, rights, dues.

END OF THE GLOSSARY.

INDEX

OF THE

STATUTES, ACTS OF GOVERNMENT, REGULATIONS, CONSTRUCTIONS, AND CIRCULAR ORDERS,

MENTIONED AND REFERRED TO IN THIS VOLUME.

N.B.—The numbers refer to the *Placita.*

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13th Eliz. c. 5.	Trustee, 1.
21st Jac. I. c. 16.	Limitation, 4*a*; Statute, 2.
21st Geo. III. c. 70. s. 8.	Jurisdiction, 8.
21st Geo. III. c. 70. s. 24.	False Imprisonment, 3.
21st Geo. III. c. 79. s. 24.	Pleading, 11.
33d Geo. III. c. 52. s. 156.	Jurisdiction, 13.
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53d Geo. III. c. 155. s. 105.	Criminal Law, 91.
53d Geo. III. c. 155. s. 111.	Advocate General, 1.
6th Geo. IV. c. 85.	Assignment, 1.
9th Geo. IV. c. 14.	Limitation, 48; Statute, 3.
9th Geo. IV. c. 73. s. 69.	Warrant of Attorney, 1, 2.
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ACTS OF GOVERNMENT.

Act	Sec.	Cl.	Year.	Title and Number.
8			1835	Land Tenures, 22; Sale, 59; Talookdár, 1.
8	2		„	Sale, 8, and n.
14			„	Criminal Law, 158.
16			„	Contract, 8, n.
10	1.3		1836	Contract, 8, and n.
10	3		„	Action, 42; Damages, 3.
17			1837	Criminal Law, 136.
25	4		„	Appeal, 17*a*, n.
26	9		„	Appeal, 53*a*.
29	27		1838	Appeal, 19. 24; Salt, 4.
29	32		„	Appeal, 38.
9	1		1839	Practice, 439*a*. 441*a*, 442. 445*b*.
21			„	Evidence, 2.
32			„	Act, 2, 3; Interest, 7. 11. 13, 14, n. 18.
4			1840	Action, 17; Arbitration, 18. 36*a*; Criminal Law, 5, 6. 33; Jurisdiction, 20. 56; Mesne Profits, 7; Practice, 234.
4	8,9		„	Criminal Law, 7.
4	9		„	Arbitration, 12.
5			„	Evidence, 3.
10			1840	Religious Endowment, 15*a*.
14			„	Limitation, 4*b*; Statute, 3.
23			„	Pleading, 13.
1			1841	Jurisdiction, 67; Land Tenures, 17, n.
7	6		„	Evidence, 53.
7	7		„	Evidence, 54.
8			„	Act, 1.
10			„	Ship, 5.
11	11		„	Appeal, 17*b*.
11	17		„	Appeal, 17*b*.
12			„	Sale, 20*a*.
12	7		„	Sale, 15.
12	18		„	Sale, 85. 92. 97, and n.
12	21		„	Attachment, 10.
12	22		„	Action, 165, n.
12	25		„	Jurisdiction, 60; Sale, 97, and n.
12	30		„	Practice, 59.
16			„	Power of Attorney, 2.
17	2		„	Bye-laws, 1 n.
19			„	Possession, 3; Practice, 60, 142; Security, 4*a*; Succession, 1; Title, 6.

Act	Sec.	Cl.	Year.	Title and Number.
19	2	. .	1841	Evidence, 140.
19	3	. .	„	Curator, 1; Evidence, 140.
19	14	. .	„	Act, 4.
20	. .	. .	„	Action, 12; Certificate of heirdom, 1; Debtor 10; Inheritance, 11; Practice, 134, 135, 136, 136a. 143; Succession, 1.
20	5	. .	„	Certificate of heirdom, 2.
29	. .	. .	„	Act, 5; Appeal, 42. 47. 52e. 56, 57. 59. 61a, 61b; Limitation, 140; Notice, 9; Pleader, 2a; Practice, 217. 219, 220, 221. 223. 227, 228, 229, 230. 231b. 436.
29	1	. .	„	Practice, 207. 231a.
29	3	. .	„	Appeal, 30.
31	. .	. .	„	Criminal Law, 58.
16	. .	. .	1842	Act, 6; Lease, 8, 9.
2	. .	. .	1843	Practice, 346.
3	. .	. .	„	Appeal, 77. 132. 138. 151.
5	. .	. .	„	Slavery, 2.
5	2	. .	„	Slavery, 1.
6	2	. .	„	Appeal, 17a, n.

Act	Sec.	Cl.	Year.	Title and Number.
6	5	. .	1843	Appeal, 17a. n., 122a, n.
12	. .	. .	„	Practice, 235. 246, &
9	4	. .	1844	Appeal, 25.
1	9	. .	1845	Act, 7.
1	11.13	. .	„	Sale, 93.
1	26	. .	„	Assessment, 28, 35.
2	. .	. .	„	Criminal Law, 88, n.
3	. .	. .	„	Costs, 43.
16	. .	. .	„	Appeal, 13. 48. 52e, n., 57. 61a, 61b; Practice, 227, 228.
1	. .	. .	1846	Act, 8; Pleader, 11, & n.
1	7	. .	„	Act, 9.
4	. .	. .	„	Sale, 30a.
4	5	. .	„	Sale, 65.
17	. .	. .	1847	Appeal, 61; Practice, 229, 230.
25	9	. .	„	Appeal, 52a.
21	. .	. .	1848	Gaming, n.
2	. .	. .	1849	Criminal Law, 192, n., 197.
4	. .	. .	„	Criminal Law, 147, n.
4	1	. .	„	Criminal Law, 46.
4	1	. .	1850	Appeal, 52e, n.
9	6	. .	„	Evidence, 53, n.
30	4	. .	„	Appeal, 52e, n.

BENGAL REGULATIONS.

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3	8	. .	1793	Jurisdiction, 76. 81.
3	12	. .	„	Action, 81; Fines, 6; Jurisdiction, 26.
3	13	. .	„	Practice, 147.
3	14	. .	„	Limitation, 12. 64, n. 96, n. 130.
3	16	. .	„	Action, 9. 57; Practice, 48.
4	3	. .	„	Action, 150.
4	5	. .	„	Appeal, 18; Practice, 162. 185. 194.
4	6	. .	„	Evidence, 41.
4	7	. .	„	Practice, 317.
4	15	. .	„	Mortgage, 4, n.
4	25	. .	„	Regulation 3a.
6	4	. .	„	Appeal, 9, n.
8	19	. .	„	Land Tenures, 24, n.
8	44	. .	„	Málikáneh, 3, n.; Practice, 89, n.
8	51	. .	„	Evidence, 129.
8	54,55	. .	„	Assessment, 25; Cesses, 1, 2.
8	59	. .	„	Assessment, 24.
9	49	. .	„	Criminal Law, 81.
10	19	. .	„	Evidence, 11, n.
10	36	. .	„	Collector, 14; Guardian, 13.
15	. .	. .	„	Usury, 2, 3.
15	7	. .	„	Interest, 16.
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15	10	. .	„	Interest, 10.
15	11	. .	„	Mortgage, 84. 87.
17	6	. .	„	Damages, 7.
19	. .	. .	„	Land Tenures, 5a, 6; Limitation, 38 n., 40a, n.
19	2	. .	„	Practice, 305.

Reg.	Sec.	Cl.	Year.	Title and Number.
19	2	1	1793	Grant, 4, n.
19	11	2	„	Limitation, 38, n.
19	12	. .	„	Limitation, 40a, n.
24	17	. .	„	Jurisdiction, 21.
27	2	2	„	Dues and Duties, 2.
27	11	. .	„	Fines, 2; Stamp, 3.
36	6	2	„	Mortgage, 72.
44	8	. .	„	Assessment, 39; Grant, 5.
4	5	. .	1794	Notice, 1.
4	7	. .	„	Assessment, 24.
1	. .	. .	1795	Settlement, 1.
22	. .	. .	„	Limitation, 121.
22	15.26, 32	. .	1795	Construction, 7.
22	35	5	„	Limitation, 122, n.; Construction, 7.
10	3	. .	1796	Criminal Law, 81.
11	. .	. .	„	Confiscation, 2, 3.
1	2	. .	1798	Mortgage, 39. 42. 57.
5	. .	. .	1799	Executor, 9; Security, 4, 4a; Surety, 3.
5	3	. .	„	Guardian, 10, n.
5	4	. .	„	Security, 1. 3a.
5	5	. .	„	Security, 3a.
5	7	. .	„	Security, 2.
7	. .	. .	„	Action, 94; Assessment, 13. 23; Collector, 7; Jurisdiction, 102; Land Tenures, 23; Sale, 26.
7	15	. .	„	Land Tenures, 22; Sale, 102, n.
7	15	7	„	Land Tenures, 22.
7	15	8	„	Damages, 2.
7	25	. .	„	Sale, 8, n.

Reg.	Sec.	Cl.	Year.	Title and Number.
7	29	. .	1799	Regulation, 2.
1	. .	. .	1800	Guardian, 3. 6. 11.
2	3	4	1803	Mortgage, 45, n.
2	8	. .	„	Jurisdiction, 23.
2	10	. .	„	Action, 65; Jurisdiction, 45.
2	18	. .	„	Limitation, 82, n.
2	18	3	„	Limitation, 69.
3	2	. .	„	Action, 172.
3	3	. .	„	Action, 141.
3	5	. .	„	Practice, 45.
3	7	. .	„	Evidence, 110.
21	. .	. .	„	Arbitration, 6.
21	6	. .	„	Arbitration, 9.
26	25	. .	„	Assessment, 44, n.
34	10	. .	„	Mortgage, 87.
2	. .	. .	1805	Limitation, 40*a*, n., 40*c*; Possession, 5; Practice, 56.
2	2	. .	„	Limitation, 40*a*, n.
2	2	2	„	Limitation, 38, n., 40*a*, and n.
2	3	. .	„	Limitation, 133. 135, n.
2	3	1	„	Limitation, 22; Title, 4, n.
2	3	2	„	Limitation, 38, n. 135, and n., 136.
2	3	4	„	Limitation, 21.
2	7	. .	„	Damages, 7.
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2	. .	. .	1806	Attachment, 8. 24. 27, 28; Damages, 13; Practice, 196.
2	4	. .	„	Arrest, 3.
2	5	. .	„	Attachment, 3. 10. 12. 16, 17. 20. 23. 25, 26.
2	5	1	„	Surety, 5.
2	11	. .	„	Insolvent, 4.
2	25	2	„	Sale, 7.
17	. .	. .	„	Mortgage, 32, 33; Sale, 9.
17	7	. .	„	Mortgage, 42. 57.
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13	4	1	1808	Action, 154.
5	. .	. .	1809	Criminal Law, 35, n.
10	10	. .	1810	Infant, 4 n.
19	. .	. .	„	Religious Endowment, 7, 8.
9	. .	. .	1811	Partition, 11, n.
5	. .	. .	1812	Action, 94. 149; Assessment, 28. 35. 44, and n. 55*a*; Criminal Law, 27; Limitation, 138, n.
5	2	. .	„	Lease, 8.
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5	10	. .	„	Assessment, 31. 47. 50. 54, 55. 57. 59.
5	26	. .	„	Assessment, 31; Attachment, 14; Executor, 9; Jurisdiction, 32, 33; Lease, 7.
14	. .	. .	„	Lease, 9.
22	. .	. .	„	Jurisdiction, 88, 89.

Reg.	Sec.	Cl.	Year.	Title and Number.
2	. .	. .	1813	Criminal Law, 27.
6	3	. .	„	Arbitration, 3.
7	3	. .	„	Arbitration, 34.
8	. .	. .	„	Criminal Law, 35, n.
19	. .	. .	1814	Butwárá, 1; Mortgage, 13; Partition, 1. 8, 9, 10, 11, n.
19	4	2	„	Butwárá, 2, 3.
19	17	2	„	Fines, 3; Sale, 20*a*.
19	22	.	„	Butwárá, 3.
23	. .	. .	„	Practice, 188.
23	25	3	„	Practice, 183.
23	25	4	„	Practice, 183.
23	40	. .	„	Fines, 4.
23	73	. .	„	Fines, 4; Practice, 183.
23	75	. .	„	Practice, 183.
26	. .	. .	„	Practice, 341*c*.
26	2	. .	„	Appeal, 117.
26	2	2	„	Appeal, 153, n.
26	4	. .	„	Appeal, 27*a*, n.
26	4	2	„	Appeal, 148, n.; Practice, 341*d*. 341*f*.
26	4	3	„	Practice, 341*f*.
26	7	1	„	Action, 130, n.; 140 n.
26	8	10	„	Appeal, 52*a*, 53*a*: Practice, 340*a*.
26	10	. .	„	Action, 84; Evidence, 57, n. 154; Practice, 61. 412, 413. 416, 417.
26	10	3	„	Evidence, 57, n.
26	12	. .	„	Action, 84; Practice, 61.
26	12	3	„	Practice, 200.
27	6	. .	„	Act, 8.
27	26	3	„	Costs, 17.
27	31	1	„	Pleader, 9.
27	35	. .	„	Act, 9.
28	. .	. .	„	Practice, 441*b*.
28	5	1,2	„	Practice, 444.
28	12	3	„	Appeal, 68*a*.
29	. .	. .	„	Debtor, 13*b*.
11	2	. .	1816	Jurisdiction, 21*b*, n.
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19	7	2	„	Appeal, 153.
20	10	. .	„	Dawk, 1.
3	. .	. .	1818	Attachment, 4.
8	. .	. .	„	Criminal Law, 71, n.
8	2	2	„	Criminal Law, 65.
12	5	. .	„	Criminal Law, 10.
2	. .	. .	1819	Boundary, 2; Collector, 5; Limitation, 40*b*, 40*c*.
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2	30	1	„	Land Tenures, 5.
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8	14	. .	„	Sale, 76, and n.

Reg.	Sec.	Cl.	Year.	Title and Number.
8	17	5	1819	Limitation, 55. 131.
8	18	2	„	Attachment, 7.
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